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ABSTRACT

Studying ideas from the Federalist papers provides high school students with an opportunity to examine the first principles of U.S. civic culture. By increasing their knowledge and appreciation of the basic ideas in the Federalist papers, students develop civic literacy that is likely to enhance their participation in a free society. This volume contains teaching plans for ten lessons: (1) "Federalists versus Antifederalists"; (2) "What Is The Federalist?"; (3) "Limited Government and the Rule of Law in The Federalist, Numbers 23, 51, 53, 70"; (4) "Federalism and Republicanism in The Federalist, Numbers 9 and 39"; (5) "Separation of Powers with Checks and Balances in The Federalist, Numbers 47, 48, 51"; (6) "Judicial Review in The Federalist, Numbers 78, 80, 81"; (7) "National Security with Liberty in The Federalist, Numbers 4, 23, 41"; (8) "Popular Sovereignty and Free Government in The Federalist, Numbers 10, 39, 51"; (9) "Hamilton, Madison, and the Bill of Rights"; and (10) "Chronology of Main Events Associated with the Origin and Writing of The Federalist." The content and purposes of the lessons, their characteristics, and how to select and use them are thoroughly explained in the notes to teachers. Selected papers from The Federalist are included in the appendix. (KWL)

Lessons on the Federalist Papers:

Supplements to High School Courses in American History, Government, and Civics

by
John J. Patrick
and
Clair W. Keller

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Indiana University
Bloomington, Indiana

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LESSONS ON THE FEDERALIST PAPERS: SUPPLEMENTS TO HIGH SCHOOL COURSES IN AMERICAN HISTORY, GOVERNMENT, AND CIVICS

by
John J. Patrick
and
Clair W. Keller

Social Studies Development Center
ERIC Clearinghouse for Social Studies/Social Science Education
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INTRODUCTION

High school teachers of American history, government, and civics—like teachers in other disciplines—are asked to assume more and more educational responsibilities, which result from state mandates and community directives. In addition, teachers are advised continually by leaders of educational associations and curriculum experts about what should be added to the curriculum. Some of this advice comes with packaged learning materials for quick and easy infusion into the curriculum. However, new learning materials should not be thoughtlessly added to the curriculum, because other topics will have to be deleted to make room for them. Teachers who contemplate infusion of new ideas and lessons into their courses should deliberate about "content trade-offs" and decide whether or not infusion of new material is more valuable educationally than the content that it would replace. Furthermore, they should consider carefully the fit of new content and materials with the existing curriculum and their educational objectives. Why, for example, should *Lessons on the Federalist Papers* be infused into high school courses in American history, government, and civics? How can these learning materials be justified in terms of their fit with the existing curriculum, standard educational goals, and worthy new ideas about teaching and course content?

Teaching The Federalist Papers in High School

From 1776 to 1787, Americans were engaged extraordinarily in constitution-making. Never in human history had so many people in one country debated, written, and approved so many frames of government as did citizens of the thirteen United States of America, who created constitutions for their state governments and their nation. Never before were so many lofty theories of free government put into practice. It seemed as if no issue concerning the powers, procedures, and problems of republican government was overlooked. *The Federalist*, a collection of eighty-five essays on principles of republican government in the American Constitution (written by Alexander Hamilton, James Madison, and John Jay), can be viewed as the culmination of this surge of political thinking. To know *The Federalist* papers is, therefore, to know main ideas of Americans who created our nation through deliberation and made, according to John Adams, "thirteen clocks tick as one."

To include ideas from *The Federalist* papers in the high school curriculum is to provide students with a grand opportunity to examine first principles of the American civic culture. More than 200 years ago, Thomas Paine commented on the value of reference to first principles. He said: "It is by tracing things to their origin, that we learn to understand them. . . . It is by keeping that line and the origin always in view that we never forget them."[1] By examining first principles of constitutional government in *The Federalist*, young Americans can deepen their understanding and appreciation of popular sovereignty, liberty under law, federalism, republicanism, minority rights, national security, limited government, the rule of law, separation of powers with checks and balances—ideas embedded in the curriculum and educational goals of secondary school courses in American history, government, and civics.

From 1788 until today, leading Americans have recommended strongly that principles of *The Federalist* should be essential elements of civic education, because they represent common values of the American people—foundations of national unity in a pluralistic society. Furthermore, these principles are also practical instruments of popular and free government—means of conducting public affairs and maintaining security with liberty. Shortly after its completion, Thomas Jefferson proclaimed *The Federalist* to be "the best commentary on the principles of government which was ever written."[2] He advised that teaching these principles "should be the creed of our political faith, the text of civic instruction. . . ."[3] William Bennett, U.S. Secretary of Education, echoes the views of Jefferson by calling upon educators to emphasize principles and values of *The Federalist* in the curriculum: "A good exercise," says Bennett, "would be to identify them [principles and values of *The Federalist*] and determine their current vitality."[4]

Indeed, the principles and values of *The Federalist* are as vital and relevant today as they were during the debate over ratification of the Constitution, because the issues and problems discussed by Hamilton, Madison, and Jay are perennial concerns and challenges of people who value free government; that is, popular government with constitutional limits to protect the life, liberty, and property of individuals.[5] However, *The Federalist* is more than a theoretical defense of a particular form of government. The authors connect ideas to practices in government and examine perennial issues associated with paradoxes of the American Constitution—how to have an energetic government that is also limited strictly by law; how to have government of the many that also prohibits majorities from oppressing individuals; how to have a national government with protection of states' rights; how to have both separation and sharing of powers among three branches of government; how to maintain national security and order while also protecting rights and liberties of individuals, including dissenters.

Teachers and students who undertake Secretary Bennett's exercise of determining the "current vitality" of principles and values of *The Federalist* will find that these ideas are applicable, in general if not in every detail, to government and politics in our contemporary society. Therefore, by increasing their knowledge and appreciation of basic ideas in *The Federalist*, students develop civic literacy that is likely to enhance their performance as citizens of a free society, an overriding goal of high school education in history, government, and civics.

The enduring relevance of *The Federalist* is revealed by its continuing circulation in many languages and in more than one hundred editions. Leaders of nations around the world, in the nineteenth and twentieth centuries, have "sought insights from the essays" in their attempts "to establish republican forms of government."[6] However, *The Federalist* seems to be valued much less by high school curriculum developers and textbook authors. This classic work is mentioned only briefly, if at all, in widely used high school textbooks on American history, government, and civics. Current lack of coverage in textbooks is consistent with past practices. A study of the treatment of *The Federalist* in secondary school textbooks, conducted in 1959, reported that only three of seventeen civics textbooks mentioned *The Federalist*. In addition, "of seventeen history and government texts, twelve made only minimal reference to the essays."[7]

Teaching about *The Federalist* papers is justified by their importance in the American civic heritage, their enduring relevance to contemporary citizenship and government, their fit with standard educational goals, and their neglect in secondary school courses and textbooks. It seems that there is need for learning materials for high school students on principles and values in *The Federalist*. The bicentennial of the Constitution in 1987 is a suitable occasion to address the obvious need to teach *The Federalist* in high school courses in American history, government, and civics.

Content and Purpose of These Lessons on The Federalist

The teaching plans and learning materials in this volume, which treat various aspects of *The Federalist*, are designed to supplement high school courses in American history, governnment, and civics. There are ten original lessons (teaching plans and learning materials for students) that fit standard courses and educational goals.

These lessons enrich and extend standard course content, but do not duplicate it. *Permission is granted to teachers to make copies of these lessons for use with their students.*

The lessons treat core concepts and values on government in *The Federalist*: limited government, the rule of law, energetic government, republicanism, federalism, separation of powers, checks and balances, judicial review, rights of individuals, liberty, national security, popular sovereignty, and free government. In these lessons, core ideas are defined and discussed briefly and simply to establish a context for the student's examination of excerpts from essays by Hamilton, Madison, or Jay, which pertain to the concepts. It is important to emphasize that these lessons are not intended to be a comprehensive treatment of ideas in *The Federalist*. Furthermore, the lessons are designed to be used singly, without reference to other lessons in this volume. The lessons should be viewed as a pool of resources that may be used variously by different teachers to improve instruction about American constitutional government in high school courses.

Main goals of the lessons in this book are to help students to:

(1) Know the origins and purposes of *The Federalist*.
(2) Comprehend principles and values of constitutional government discussed in *The Federalist*.
(3) Know perennial issues of American constitutional government, which are discussed in *The Federalist*.
(4) Identify and comprehend main ideas in primary sources, such as *The Federalist*.
(5) Analyze constitutional issues and alternative positions on these issues.
(6) Formulate and defend a position about constitutional issues raised in *The Federalist*.
(7) Develop reasons for commitment to values of constitutional government, which are fundamental parts of the American civic culture.

These seven goals conform to curriculum guides and course content of secondary school courses in American history, government, and civics. They also are consistent with the long-standing overall purpose of the social studies in American schools—education for citizenship in a free society.

Distinctive Characteristics of These Lessons

The following statements describe distinctive characteristics of lessons in this volume. These statements are criteria that guided development of these lessons on *The Federalist* papers. These statements can be used to assist teachers in judging and using these lessons.

1. **These lessons fit standard secondary school courses in American history, government, and civics.** Each lesson is compatible with the standard high

school curriculum in the social studies. Furthermore, each lesson can be connected to specific parts of typical textbooks in American history, government, and civics. Therefore, use of these lessons can be justified in terms of standard goals and content of high school courses.

2. **These lessons extend and enrich standard textbook treatments of topics on American constitutional government, but do not duplicate them.** Each of these lessons enables teachers to provide detailed treatments of topics and ideas that are merely mentioned or discussed briefly in textbooks. In-depth study, involving primary sources, provides high school students with opportunities, rarely experienced, for reflection and deliberation about core concepts, values, and issues.

3. **Each lesson has a clear statement of purposes and well-organized content that pertains to the purposes.** Effective learning materials indicate clearly purposes or objectives of teaching and learning. Learning is enhanced when objectives of a lesson are presented clearly and perceived readily by students. Learning is also aided when content is structured logically in terms of the objectives.

4. **Each lesson has learning activities that require students to demonstrate achievement of learning objectives or purposes.** Students are required to use ideas and facts emphasized in the lesson to answer questions or complete exercises that fit the objectives of the lesson.

5. **These lessons encourage applicaton of knowledge to performance of various kinds of cognitive operations, from recall and comprehension to interpretation, analysis, synthesis, and evaluation.** Students are challenged to identify and comprehend main ideas, to clarify and analyze alternative positions on issues, and to take a stand in favor of a position.

6. **Each lesson pertains to one or more of the major goals of this volume, stated above.** As indicated by the major goals, these lessons emphasize core concepts and values of American constitutional government, which are discussed in *The Federalist*. In line with major goals of this volume, these lessons also highlight enduring issues of American constitutional government, which are discussed in *The Federalist*. Finally, these lessons encourage commitment to core concepts and values of American constitutional government, while showing how these ideas require interpretation by citizens in response to specific questions and circumstances.

7. **Each lesson includes a teaching plan and learning materials to be duplicated and distributed to students.** The teaching plan indicates main points and objectives of each lesson, connections of the lesson to the high school curriculum, and suggestions for opening, developing, and concluding the lesson. The learning materials include discussion of main ideas, excerpts from *The Federalist* papers that pertain to main ideas of the lesson, and activities that require use of main ideas and information in the lesson.

How To Select and Use These Lessons

These ten lessons on *The Federalist* papers are more than most teachers can use in a single course, given the need to cover various topics in a limited period of time. The lessons, therefore, should be viewed as a reservoir of teaching resources, which different teachers will draw upon variously. Many teachers will select only one or two of these lessons to supplement a single part of their textbook. Other teachers will decide to use several of the lessons. A few teachers may decide to use all of the lessons in a special unit of instruction on *The Federalist*.

Various choices about how to use the lessons are possible, because each lesson can be used singly, without reference to any other lesson in this volume. However, two or more of the lessons can be taught in combination, because the ideas in each lesson can be readily connected to every other lesson in this volume.

All materials needed to teach a lesson are provided in this volume. However, some teachers may decide to expand upon and improve these lessons by exposing students to related learning materials. Teachers are also encouraged to adapt these lessons to fit their style of teaching, their perception of student needs, or their classroom circumstances. Teaching plans are presented as general suggestions, not as prescriptions.

Little time is needed to prepare to use a lesson. To teach a lesson, follow these steps.

1. Read the materials for students and the lesson plan for teachers.

2. Make and distribute copies of the learning materials for students.

3. Follow or modify teaching suggestions for opening, developing, and concluding the lesson. It is likely that many teachers will modify teaching plans and adjust their use of student materials to make them more useful in particular situations.

These ten lessons on *The Federalist* papers are a mere sampler of the richness of content in the eighty-five essays by Hamilton, Madison, and Jay. These lessons are not meant to be a complete or comprehensive treatment of ideas in *The Federalist*. Rather, these lessons provide students with a brief introduction to a classic work on constitutional government.

Ten of *The Federalist* papers are included in the Appendix to this volume. Excerpts from the essays, included in these lessons, address core concepts such as limited government and the rule of law; republicanism and federalism; separation of powers with checks and balances; judicial review; national security with liberty; majority rule and minority rights; popular sovereignty and free government. Lessons on these ideas are intended to stimulate thinking, and perhaps additional reading, in *The Federalist* and other works on constitutional government in American history and contemporary society. These lessons are *not* designed to encourage thoughtless acceptance of any point of view. Rather, our purpose is to spark reflection, deliberation, discourse, and interest in continuing inquiry about fundamental ideas in the American civic legacy.

NOTES

1. Quoted in *The Federalist Papers Re-Examined, Number 1: Past as Prologue* (Washington, DC: League of Women Voters of the United States Publication, 1977), 1.
2. Quoted in Roy P. Fairfield, Editor, "Introduction," *The Federalist Papers* (Baltimore: The Johns Hopkins University Press, 1981), xii.
3. Quoted in *The Federalist Papers Re-Examined, Number 1: Past as Prologue* (Washington, DC: League of Women Voters of the United States Publication, 1977), 2.
4. William J. Bennett, "Celebrating the Bicentennial of the Constitution," *National Forum* LXIV (Fall 1984): 62.
5. Gottfried Dietze, *The Federalist: A Classic on Federalism and Free Government* (Baltimore: The Johns Hopkins University Press, 1960), 69.
6. Fairfield, "Introduction," *The Federalist Papers*, xix.
7. Fairfield, "Annotative Appendix," 283.

TEACHING PLAN FOR LESSON 1:
FEDERALISTS VERSUS ANTIFEDERALISTS

Preview of Main Points

The purpose of this lesson is to establish a context for examination of ideas in *The Federalist* papers in subsequent lessons in this volume. Toward this end, this lesson introduces the contending forces—Federalists and Antifederalists—in the debate over ratification of the Constitution in 1787-1788. There is a brief, general, and incomplete discussion of differences between the Federalists and the Antifederalists in order to set the scene for other lessons in this volume. This lesson is *not* designed to teach comprehensively or in detail about the contending postions of Federalists and Antifederalists. Rather, the intention is to provide a brief overview of ideas that differentiated Federalists from Antifederalists.

Curriculum Connection

The struggle over ratification of the Constitution of 1787 is included in chapters on the writing and ratifying of the Constitution, which appear in standard high school textbooks in American history, government, and civics. Coverage of this topic is uneven, however, and ranges from as little as one page to four or five pages. This lesson can help teachers extend and enrich limited textbook descriptions of differences between Federalists and Antifederalists during the campaign over ratification of the Constitution.

Objectives

Students are expected to:

(1) Know generally the position of the Federalists on ratification of the Constitution.
(2) Know generally the position of the Antifederalists on ratification of the Constitution.
(3) Distinguish examples of statements by Federalists from examples of statements by Antifederalists.
(4) Compare and contrast ideas about government of Federalists and Antifederalists.
(5) Write brief paragraphs that present positions of Federalists and Antifederalists on ratification of the Constitution.

Suggestions for Teaching the Lesson

Opening the Lesson. Establish a context for the debate between Federalists and Antifederalists by referring to an American history textbook to review social-political conditions in the United States of the 1780s. Review with students the circumstances and political issues, which led to the Constitutional Convention of 1787. Indicate that the main point of this lesson is to examine alternative positions of opposing forces in the debate over ratification of the Constitution, Federalists and Antifederalists.

Developing the Lesson. Have students read the first part of this lesson, about differences between the Federalists and Antifederalists. They are presented with definitions and examples of each position to help them learn how to distinguish Federalist from Antifederalist viewpoints about limited government and the rule of law, federalism and republicanism, popular sovereignty, and the Bill of Rights.

Require students to complete the first "application" exercise at the end of the lesson, which asks them to distinguish Federalist from Antifederalist statements in a list of unlabeled statements. Following are correct answers:

1. F—Alexander Hamilton, *The Federalist*, 23, 1788.
2. F—Alexander Hamilton, *The Federalist*, 23, 1788.
3. F—Alexander Hamilton, *The Federalist*, 70, 1788.
4. AF-Patrick Henry, Speech at the Virginia Ratifying Convention, 1788.
5. F—John Jay, *The Federalist*, 2, 1787.
6. F—James Madison, *The Federalist*, 51, 1788.
7. AF-Patrick Henry, Speech at the Virginia Ratifying Convention, 1788.
8. AF-A Pennsylvania Farmer, *Freeman's Journal*, 1788.
9. F—Representative James Jackson of Georgia, Speech at the First Session of Congress, 1789.
10. AF-Agrippa, pseudonym of an Antifederalist 1788.
11. AF-George Clinton, Governor of New York, 1787.
12. F—Alexander Hamilton, *The Federalist*, 1, 1787.

13. F—Alexander Hamilton, *The Federalist*, 15, 1787.
14. AF-*Letters From The Federalist Farmer*, 1787.
15. AF-*Letters From The Federalist Farmer*, 1787.

In discussions of the first "application exercise" require students to explain the main idea of statements that they identify as examples of the Federalist or Antifederalist position. In addition, require students to give reasons for their answers about which statements are examples of the Federalist and Antifederalist position. During this discussion, students should be reminded that they might refer to the opening discussion of contrasting positions of Federalists and Antifederalists to help them explain and give reasons for answers.

Have students complete the second "application" exercise on classification of statements by Federalists and Antifederalists. Following are correct answers:

1. #4, #7, #8, #11, #14.
2. #15.
3. #9
4. #1, #2, #3, #6, #12, #13.

Ask students to explain their classifications of statements as fitting into one of four categories: federalism, popular sovereignty, a bill of rights, and limited government and the rule of law. In addition, require them to compare and contrast Federalist and Antifederalist positions in these four categories.

Concluding the Lesson. Ask students to complete the learning activity at the end of this lesson, which involves a writing exercise. They are to construct two paragraphs about the positions of Federalists and Antifederalists on ratification of the Constitution. By following the directions for writing these paragraphs, students will be practicing skills in orderly and structured presentation of a main idea and reasons in support of it. In addition, they will be writing statements that represent a concluding summary of ideas treated in this lesson.

NOTE: We assume that the social and political context for this lesson, and subsequent lessons in this volume, will be established by high school teachers. For example, the lessons are designed to fit into standard courses and textbooks in American history, which include content and learning activities on social-economic-political conditions of various periods in the history of the United States.

LESSON 1:
FEDERALISTS VERSUS ANTIFEDERALISTS

On **September 17, 1787** the Constitutional Convention ended. Thirty-nine delegates, representing twelve of the thirteen United States of America (all except Rhode Island) signed the Constitution, which they had created during a long, hot summer in Philadelphia. They sent the proposed frame of government to Congress, the governing body of the United States under the Articles of Confederation.

On **September 28**, Congress voted to send the proposed Constitution to the legislature of each state. Congress asked each state to convene a special convention, which would decide to approve (ratify) or reject the proposed Constitution. If nine states voted to ratify it, the Constitution of 1787 would become the supreme law of these United States.

On **September 27**, only ten days after the conclusion of the Constitutional Convention, a letter was printed in the *New York Journal* that sharply criticized the Constitution of 1787 and urged the people to reject it. The author used a pen name "Cato" to disguise his identity. Many New Yorkers, however, believed that their Governor, George Clinton, either wrote the "Cato" letter or influenced the person who did it.

On **October 1**, a reply to "Cato" was printed in the *New York Daily Advertiser* and signed "Caesar"—a pseudonym chosen by Alexander Hamilton, who had represented New York at the Constitutional Convention. He was disappointed in the Constitution created at Philadelphia, but Hamilton strongly preferred it to the existing alternative, the weak government of the United States under the Articles of Confederation.

The clash between "Cato" and "Caesar" in New York was an example of debates on the new nation's future that had been taking place throughout the United States during the 1780s. Americans argued about how to solve serious problems that threatened the survival of the United States. Would the Constitution of 1787 both strengthen the United States and preserve liberties of the people, which had been won through the recent War of Independence?

Supporters of the Constitution—such as "Caesar"—called themselves *Federalists*. Their opponents—"Cato" and others—were known as *Antifederalists*. What opinions on government divided the Federalists and Antifederalists?

What Ideas Separated the Federalists and Antifederalists?

Following is a brief and general discussion of a few main ideas of the Federalists and the Antifederalists.

Limited Government and the Rule of Law. Both Federalists and Antifederalists favored limited government and the rule of law; that is, they wanted a written constitution that restricted the powers of government officials—that indicated what they could and could not do under the law of the land. However, they disagreed about how much to limit the powers of government. Antifederalists tended to favor a weak government of the United States, such as Congress under the Articles of Confederation. They feared that a strong national government would threaten the rights of the people and their state governments. By contrast, Federalists wanted a national government that could act forcefully to maintain order, provide security, and guarantee liberty under law.

Republicanism and Federalism. Both Federalists and Antifederalists wanted a republic—government by representatives of the people acting for the people. Both groups also wanted federalism—a division of power between a central government and several state governments. However, the Antifederalists preferred the kind of federal republic established by the Articles of Confederation. In the Antifederalist definition of a federation (or confederation), the central government is only a creation of the states, who retain their sovereignty and independence of action. Antifederalists believed that state governments should have more powers and duties than the central government, because they are closer and more responsive to the people. By contrast, the Federalists favored a division and sharing of powers between state governments and a national government in which the national government is supreme within its own sphere of action. This means that state governments cannot defy or contradict laws or actions of the national government that are permitted by the Constitutution. The Constitution of 1787 gave much more power to the government of the United States than it had under the Articles of Confederation. The Antifederalists favored states' rights and believed that the Constitution of 1787 gave too much power to the national government at the expense of the states. They believed that the Constitution of 1787 would create a consolidated government of the United States, in which the states would be greatly reduced in power and importance.

Popular Sovereignty. Both Federalists and Antifederalists wanted popular sovereignty—government by popular consent. However, Antifederalists believed that government by and for the people was best achieved by giving most powers of government to a legislature comprised of members elected by the people. Thus, they tended to support the Articles of Confederation, in which the Congress (national legislature) dominated the government. By contrast, the Federalists believed that power in the national government should be shared by legislative, executive, and judicial branches. They also believed that the people (eligible voters) should directly elect only members of one part of the legislative branch—the House of Representatives. Antifederalists feared that the Constitution of 1787 gave too much power to the executive branch at the expense of the other branches of government.

A Bill of Rights. Antifederalists criticized the Constitution, because it lacked a Bill of Rights to guarantee civil liberties of the people (freedom of speech and assembly, and so forth) against the powers of government officials. Federalists argued that a Bill of Rights was unnecessary, because the national government had only those powers granted to it in the Constitution. Thus, the government would not be able to deprive individuals of their basic civil liberties.

Identifying Federalist and Antifederalist Ideas

Examine statements in the following list. Can you distinguish the Federalist from the Antifederalist statements? Write the letter "F" in the space next to each statement that fits the Federalist position. Write the letters "AF" in the space next to each statement that expresses the Antifederalist position. Be prepared to give reasons for your answers.

___ 1. . . . the absurdity must continually stare us in the face of confiding to a government the direction of the most essential national interests, without daring to trust to it the authorities which are indispensable to their proper and efficient management.

___ 2. . . . a federal government . . . ought to be clothed with all the powers requisite to complete execution of its trust.

___ 3. Energy in the Executive is a leading character in the definition of good government.

___ 4. We are now fixing a national consolidation.

___ 5. This country should never be split into a number of unsocial, jealous, and alien sovereignties.

___ 6. If a majority be united by a common interest, the rights of the minority will be insecure. . . . In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature where the weaker individual is not secured against the violence of the stronger.

___ 7. States are the characteristics and the soul of a confederation. If the States be not the agents of this compact, it must be one great consolidated National Government of the people of all the States.

___ 8. The states should respectively have laws, courts, force, and revenues of their own sufficient for their own security; they ought to be fit to keep house alone if necesary; if this be not the case, or so far as it ceases to be so it is a departure from a federal to a consolidated government.

___ 9. I am against inserting a declaration of rights in the Constitution. . . . If such an addition is not dangerous, it is at least unnecessary.

___ 10. A bill of rights . . . serves to secure the minority against the usurpation and tyranny of the majority.

___ 11. The . . . new form of government . . . declares a consolidation or union of all the thirteen parts, or states, into one great whole. . . . It is an intuitive truth that a consolidated republican form of government [will lead] . . . into a monarchy, either limited or despotic.

___ 12. The vigor of government is essential to the security of liberty.

___ 13. In our case, the concurrence of thirteen distinct sovereign wills is requisite under the Confederation to the complete execution of every important measure that preceeds from the Union. It has happened as was to have been foreseen. The measures of the Union have not been executed; and the delinquencies of the States have step by step matured themselves to an extreme, which has, at length, arrested all the wheels of the national government and brought them to an awful stand.

___ 14. . . . one government . . . never can extend equal benefits to all parts of the United States. Different laws, customs, and opinions exist in the different states, which by a uniform system of laws would be unreasonably invaded.

___ 15. The number of the representatives [called for in the Constitution of 1787] appears to be too few, either to communicate the requisite information of the wants, local circumstances, and sentiments of so extensive an empire, or to prevent corruption and undue influence in the exigencies of such great powers.

Classifying Ideas of Federalists and Antifederalists

Use the preceding statements by Federalists and Antifederalists to answer the questions below.

1. (a) What are five examples of the Antifederalist position on federalism—their views on how powers should or should not be divided between a central government and the states? (b) How did this position differ from that of the Federalists?

2. (a) What is one example of the Antifederalist position on popular sovereignty? (b) How did this position differ from that of the Federalists?

3. (a) What is one example of the Federalist position on a Bill of Rights? (b) How did this position differ from that of the Antifederalists?

4. (a) What are five examples of the Federalist position on limited government and the rule of law? (b) How did this position differ from that of the Antifederalists?

5. Write a paragraph according to the following directions. In the first sentence, state the Federalist position on ratification of the Constitution of 1787. In the second sentence, present one reason in support of the Federalist position. In the third sentence, write a second reason in support of the Federalist position. In the fourth sentence, write a third reason in support of the Federalist position.

6. Write a paragraph on the Antifederalist position on ratification of the Constitution of 1787. State the Antifederalist position in the opening sentence and present three reasons in support of the opening statement in three sentences that follow the lead sentence.

TEACHING PLAN FOR LESSON 2: WHAT IS THE FEDERALIST?

Preview of Main Points

The purpose of this lesson is to introduce *The Federalist* to students. Origins, purposes, authors, and significance of this publication are discussed. This lesson features an excerpt from the first of *The Federalist* papers written by Alexander Hamilton and printed initially in *The Independent Journal* of New York City on October 27, 1787.

Curriculum Connection

This lesson can be used with American history, government, and civics textbook chapters on the writing and ratification of the Constitution.

Objectives

Students are expected to:

(1) Identify *The Federalist* as a collection of eighty-five essays written to influence ratification of the Constitution.
(2) Know about Alexander Hamilton as conceiver and major organizer of the project to write *The Federalist*.
(3) Know about Hamilton and James Madison as major authors of The Federalist, who were assisted by John Jay.
(4) Explain purposes of the authors in writing *The Federalist*.
(5) Know the short-term and long-term significance of The Federalist in American history and as an expression of the American civic heritage.
(6) Interpret and appraise ideas in *The Federalist* 1.

Suggestions for Teaching the Lesson

Opening the Lesson. Bring a copy of *The Federalist* to class and show it to students. Suggested editions are (1) publication by the New American Library, Mentor Book, edited by Clinton Rossiter or (2) publication by Wesleyan University Press, edited by Jacob E. Cooke. The text of the Mentor Book edition of *The Federalist* is from the initial two volume publication by McLean and Company in May 1788. The text of the Wesleyan University Press edition is from the initial publication of the essays in New York City newspapers, beginning in October 27, 1787.

Use the book as a concrete prop to raise questions and arouse curiosity about origins, purposes, and significance of *The Federalist* and to introduce main points and objectives of this lesson.

Developing the Lesson. Have students read the first parts of the lesson on origins, authors, and common ideas of the authors of *The Federalist*. Assign the first series of activities and questions at the end of these parts of the lesson, "Reviewing and Using Main Ideas and Facts." Have students complete these exercises in preparation for classroom discussion.

Conduct a classroom discussion on the assignment. Call upon students to give their responses to item 1. Ask others in the class to respond critically to the responders. The correct statements in item 1 are "d" and "e". Ask students to read rewritten and corrected versions of statements a, b, c, and e, which are incorrect in the list at the end of the lesson. Have students listen carefully and react critically, as necessary, to the rewritten statements.

Ask students to read the next part of the lesson on the purposes of *The Federalist*. Assign the four items in the section on "Examining Ideas in *The Federalist* papers" and remind students to prepare to discuss their responses.

After students have completed this assignment, conduct a classroom discussion about the four items. Require students to provide reasons based on evidence from this lesson to support their answers. Direct the discussion from one student to another in order to have students appraise the responses of one another. Encourage students to ask their peers to justify answers with reasons based on evidence in this lesson. Correct answers to item 4 are: b, c, d, e.

Concluding the Lesson. Ask students to read the last part of the lesson about the significance of *The Federalist* and to complete the exercises that follow it. After students have completed the three items in the concluding exercises, conduct a classroom discussion about them. Begin by calling on one student to write his/her citation on the chalkboard, in response to item 1. Ask others in the class to evaluate the citation and make corrections as needed. Then have the student read his/her annotation and ask others to evaluate it or ask questions about the annotation. Repeat the procedure with reference to item 2.

Conduct a concluding discussion on item 3. Call upon one student to read his/her brief editorial. Assign three other students to serve as a formal reaction panel in response to the editorial read to the class. Allow the reader to respond to the reaction panel. Then call upon others in the class to address questions and comments to the first speaker and to the reaction panelists.

LESSON 2: WHAT IS THE FEDERALIST?

THE FEDERALIST is a collection of 85 essays in support of the Constitution of 1787. These *Federalist* papers were conceived and written from October 1787 until May 1788, when the final essays were published, to counter arguments of Antifederalists against ratification of the new Constitution. What was the origin of *The Federalist*? Who planned and wrote these "papers" or essays? What were the purposes of the authors? What was the effect of *The Federalist* papers on the campaign to ratify the Constitution? What has been the enduring significance of *The Federalist* as an example of American ideas on constitutional government?

Origins of The Federalist Papers

The Federalist was born during the debates on ratification of the Constitution, which began after Congress sent the proposed plan of government to the states on September 29, 1787. Congress acted in line with Article VII of the Constitution: "The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same." How would citizens and their elected representatives in each state judge this new plan for government, which had been drafted by delegates to the Constitutional Convention at Philadelphia in the summer of 1787? Would special conventions in each state ratify or reject it?

Opinion on the Constitution was sharply divided throughout the United States. Alexander Hamilton reported on his home state of New York in a letter to George Washington: "The event cannot yet be foreseen. The constitution proposed has in this state warm friends and warm enemies." Hamilton had participated in the Constitutional Convention, where he was one of three delegates from New York. He had been disappointed, however, with ideas of the majority of delegates and had spoken in favor of a much stronger national government than had been approved by the Convention. Nonetheless, he strongly preferred the proposed Constitution of 1787 to the existing frame of government, the Articles of Confederation, and was among the 39 delegates who signed it on September 17. Hamilton also resolved to campaign vigorously for ratification against strong opposition to the new Constitution, which included his fellow delegates from New York to the Constitutional Convention, John Lansing and Robert Yates, and the powerful governor of his state, George Clinton.

On September 27, 1787, Clinton and his backers began their attack on the Constitution with an article in the New York *Journal*, which was signed with a pen name, "Cato." It was common in those days for public figures like Governor Clinton or Alexander Hamilton to mask their identities with pen names when writing published articles or letters on important political issues. Hamilton replied to "Cato" with two letters by "Caesar." He also started to plan a lengthy series of essays to refute Antifederalist objections to the Constitution of 1787.

Authors of The Federalist Papers

Hamilton influenced John Jay and James Madison to join him as authors of essays that would become *The Federalist*. **John Jay,** at forty-two, was the oldest of the three authors. He had served his state and nation as (1) chief author of the New York state constitution, (2) negotiator, with Benjamin Franklin and John Adams, of the Treaty of Paris, which ended the American War of Independence in 1783, and (3) Secretary of Foreign Affairs under the Articles of Confederation. Later on, Jay would become the first Chief Justice of the United States Supreme Court under the Constitution.

James Madison of Montpelier, Virginia was thirty-six years old in 1787 and had been among the most prominent leaders at the Constitutional Convention. He kept the most complete records of the debates, and had the most influence on core ideas of the new frame of government. Later, he was called "The Father of the Constitution" because of the dominant role he played in shaping the Constitution. William Pierce, delegate to the Constitutional Convention from Georgia, wrote memorable "pen portraits" of the other delegates. "Mr. Madison . . . has long been in public life; and every . . . Person seems to acknowledge his greatness. He blends together the profound politician, with the Scholar. In the management of every great question he evidently took the lead in the Convention, and tho' he cannot be called an Orator, he is a most agreeable, eloquent, and convincing Speaker. From a spirit of industry and application . . . he always comes forward the best informed Man of any point in debate. . . ." Madison went on to become a Representative to Congress from Virginia in 1789. Later, he served as Secretary of State under President Thomas Jefferson and as fourth President of the United States, 1809-1817.

Alexander Hamilton, the originator of the project to write *The Federalist*, was the youngest member of the team, thirty-two years old in 1787. Hamilton was a genius with driving ambition. During the American Revolution, he was an aide of General Washington and rose to the rank of lieutenant colonel. After the war, he became a successful lawyer in New York City and a leader in bringing about the Constitutional Convention, where he represented New York. William Pierce described Hamilton as "deservedly celebrated for his talents. He is a practitioner of the law, and reputed to be a finished Scholar. . . . Hamilton . . . enquires into every part of his subject with the searchings of philosophy . . . there is no skimming over the surface of a subject with him, he must sink to the bottom to see what foundation it rests on. . . . His manners are tinctured with stiffness, and sometimes with a degree of vanity that is highly disagreeable." Hamilton became Secretary of the Treasury under President Washington and established solid financial foundations for the new government.

Alexander Hamilton was major author of *The Federalist* and wrote fifty-one of the eighty-five essays. James Madison wrote twenty-nine essays. Illness forced John Jay to withdraw from the project, and he wrote only five essays.

Common Ideas of the Authors

The authors agreed to have their essays printed first in major New York City newspapers, and seventy-seven were published initially this way. However, circulation of *The Federalist* papers did not depend entirely on New York newspapers and reprints elsewhere. Hamilton arranged with McLean and Company of New York City to have the essays published together as a book, which appeared in two volumes in May 1788 and included eight new essays, making a total of eighty-five.

Hamilton, Madison, and Jay agreed readily on other basic points, such as the name of their projected series of essays. By calling their work, *The Federalist*, they scored a public relations victory on their opponents, who considered themselves the real "federalists" (supporters of division of power between the states and a central government) and viewed Hamilton and his backers as nationalists (who would do away with the rights and powers of state governments). The opponents of Hamilton, Madison, and Jay were called Antifederalists, a negative label that implied only opposition, with no constructive ideas to improve the government.

There also was consensus on using "Publius" as the single pen name for all essays in this series. This pseudonym referred to Publius Valerius Publicola, a great defender of the Roman Republic. The identity of "Publius" was generally unknown until publication of a French language edition of *The Federalist* in 1792.

Most importantly, the three authors agreed on basic ideas of government in the Constitution of 1787, such as the rule of law and limited government in a federal republic. They were also united in opposition to the weak and ineffective government under the Articles of Confederation and in support of an "energetic and effective" government of the United States.

As chief architect of the new frame of government created at the Constitutional Convention, Madison was a ready and willing ally of Hamilton in the fight for ratification. However, despite collaboration in the campaign to ratify the Constitution, the authors of *The Federalist* had varying and sometimes clashing ideas about government. Hamilton and Madison, for example, differed about the extent of power that a chief executive should have and on certain aspects of "federal-state" relationships. In 1788, Madison noted the variations in ideas of *The Federalist's* co-authors: "The writers are not mutually answerable for all the ideas of each other."

After ratification of the Constitution and establishment of the federal government, Madison joined Thomas Jefferson in political clashes with Hamilton that led to formation of rival political parties. These political clashes, however, lay in the future; in 1787-88, Madison and Hamilton were a formidable team in defense of the Constitution.

Reviewing And Using Main Ideas and Facts

1. Which of the following statements are correct? Make a checkmark in the space next to each correct statement in the list below. Be prepared to justify or give reasons for selection of each correct statement. Rewrite each incorrect statement to make it correct and be prepared to justify the rewritten statements.

___ a. "Caesar" was the pseudonym chosen by authors of *The Federalist*.

___ b. The main purpose of *The Federalist* was to convince delegates to the Constitutional Convention to support federalism.

___ c. Major author of *The Federalist* was John Jay.

___ d. Authors of *The Federalist* agreed that the United States needed a national government that would be stronger than the government under the Articles of Confederation.

___ e. Authors of *The Federalist* did not agree completely about the principles of constitutional government.

2. Write a brief description (no more than 200 words) of the three authors of *The Federalist*. Indicate the different levels of participation of the three authors in this project and discuss personal qualities and previous achievements of the authors that were relevant to this project.

Purposes of The Federalist Papers

The first objective of the authors of *The Federalist* was to persuade the people of New York to ratify the Constitution. Thus, each essay was addressed "To the People of the State of New York" and published first in a New York newspaper. A second objective was to influence Americans of all thirteen states to approve the Constitution. The authors hoped their essays would be widely reprinted, distributed, and read throughout the United States. Toward this end, they agreed to a rapid pace of writing to meet newspaper schedules that might bring their ideas into contact with the greatest number of readers in time to influence decisions at the state ratification conventions.

These major objectives suggest that *The Federalist* was intended mainly as a work of advocacy. The authors were willing to submerge their political differences in the overall pursuit of a common goal—ratification of the Constitution. Madison and Jay also agreed with Hamilton that the Constitution of 1787 was "a compromise of . . . many dissimilar interests and inclinations." It did not reflect exactly the political ideas of any one of the co-authors, but they agreed that it was the best frame of government achievable under the circumstances, and far superior to the Articles of Confederation.

Hamilton discussed purposes of *The Federalist* in the first essay of the series, published in *The Independent Journal* of New York City on October 27, 1787. Following is an excerpt from *The Federalist* 1.

NUMBER 1: HAMILTON

AFTER an unequivocal experience of the inefficacy of the subsisting federal government, you are called upon to deliberate on a new Constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire in many respects the most interesting in the world. It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force. If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind. . . .

I propose, in a series of papers, to discuss the following interesting particulars:—*The utility of the* UNION *to your political prosperity—The insufficiency of the present Confederation to preserve that Union—The necessity of a government at least equally energetic with the one proposed to the attainment of this object—The conformity of the proposed Constitution to the true principles of republican government—Its analogy to your own State constitution*—and lastly, *The additional security which its adoption will afford to the preservation of that species of government, to liberty, and to property*. In the progress of this discussion I shall endeavor to give a satisfactory answer to all the objections which shall have made their appearance, that may seem to have any claim to your attention.

It may perhaps be thought superfluous to offer arguments to prove the utility of the UNION. . . . But the fact is that we already hear it in the private circles of those who oppose the new Constitution, that the thirteen States are of too great extent for any general system, and that we must of necessity resort to separate confederacies of distinct portions of the whole. . . . [but] nothing can be more evident to those who are able to take an enlarged view of the subject than the alternative of an adoption of the new Constitution or a dismemberment of the Union. . . . Publius

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Examining Ideas in The Federalist Papers, Number 1

1. What was the "crisis at which we have arrived" that is mentioned in the first paragraph of this essay?
2. Why, according to "Publius", would a "wrong election of [decision about] the part we shall act . . . [in response to the "crisis"] deserve to be considered as the general misfortune of mankind"?
3. What advice did "Publius" have for Americans about the decision that should be made in response to the crisis that they faced in the autumn of 1787?
4. Which of the following statements agree with essay 1? Make a checkmark in the space next to each statement that agrees with "Publius" and be prepared to give reasons for your judgments about each statement in the list below.

___ a. The government of the United States, under the Articles of Confederation, is tyrannical.

___ b. The Constitution of 1787 would contribute more to preservation of liberty than would the Articles of Confederation.

___ c. If the Constitution of 1787 is not ratified, then the Union will not endure.

___ d. Americans had a rare, if not unique, opportunity to decide for themselves upon the form of government they would have.

___ e. An important duty of government is protection of property rights.

Significance of The Federalist Papers

Were the purposes of "Publius" achieved? We might answer "yes", because the Constitution was ratified in the thirteen original states of the United States; although the vote in some cases was very close—in New York, for example, the vote was 30-27. In North Carolina and Rhode Island, the Constitution—rejected at first—was ratified after the new government of the United

States was established. Thus, only in a general sense, did "Publius" achieve his goal.

Recent studies by historians have suggested that the direct influence of *The Federalist* on the outcome was slight, because of the limited circulation of the essays outside New York City before and during the conventions. Few voters who elected delegates to the conventions had read these essays, and few delegates at the conventions had read them. Indirect effects of *The Federalist* on the ratification debates may have been greater, if harder to pin down. James Madison used ideas in these essays during debates in the Virginia Convention; Hamilton and Jay also used the writings of "Publius" to justify points made at the New York Convention.

Although *The Federalist* did not fully satisfy the purposes of its authors, as a work of advocacy during the ratification campaign, it achieved lasting fame as a brilliant work on principles of constitutional government. Several American leaders recognized the importance of *The Federalist* soon after it was published. Thomas Jefferson, for example, wrote to James Madison and lauded *The Federalist* as "the best commentary on the principles of government which was ever written." The great Chief Justice of the Supreme Court, John Marshall, used ideas in *The Federalist* to justify his landmark decisions. For example, in *Cohens v. Virginia* (1821) he wrote: "It is a complete commentary on our Constitution, and it is appealed to by all parties in the questions to which that instrument gave birth." During the nineteenth and twentieth centuries, scholars and political leaders of many nations praised *The Federalist* as they used it to guide their thinking and practical work in governance. Thus, *The Federalist* has been acclaimed as the major contribution of Americans to the theory and practice of constitutional government.

Reviewing and Using Ideas and Facts

1. Construct a citation on the first *Federalist* paper and include the author, place of publication, publisher, and date of publication. Write an annotation of no more than thirty-five words to describe the content of the essay.

2. Construct a citation on the initial publication of the series of eighty-five essays that comprised the two volume book, *The Federalist*. Write an annotation of no more than one hundred words to describe the purposes, content, and significance of the two volumes.

3. Assume that you were publisher of a newspaper in New York in October 1787. After publication of essay number 1 of *The Federalist* in a rival newspaper, you decide that you should write an editorial about it for publication in your newspaper. Your assignment is to write a brief editorial (no more than 250 words) in response to ideas in *The Federalist* 1. To what extent do you agree with these ideas? Why?

TEACHING PLAN FOR LESSON 3: LIMITED GOVERNMENT AND THE RULE OF LAW IN THE FEDERALIST, NUMBERS 23, 51, 53, 70

Preview of Main Points

The purpose of this lesson is to increase students' knowledge of the treatment of limited government and the rule of law in *The Federalist*. This lesson features excerpts from four *Federalist* papers—Numbers 23, 51, 53, 70. Students are challenged to think about the meaning and value of limited government and the rule of law as main ideas in the Constitution and the American civic heritage.

Curriculum Connection

This lesson can be used in combination with chapters on the introduction of government in civics and government textbooks. The lesson also fits the standard American history textbook treatment of the period when the Constitution was written and ratified.

Objectives

Students are expected to:

(1) Identify and comprehend ideas on limited government and the rule of law in *The Federalist* 23, 51, 53, 70.

(2) Examine and explain ideas on limited government and the rule of law in *The Federalist* 23, 51, 53, 70.

(3) Find examples of the attempted balance between limited government and energetic government in the Constitution and explain how they fit ideas in *The Federalist*.

(4) Appraise ideas about limited government and the rule of law presented by Hamilton and Madison in *The Federalist*.

(5) State and justify a position on the value of limited and energetic government as presented in *The Federalist*.

Suggestions for Teaching the Lesson

Opening the Lesson. Inform students of the main points of the lesson. Have students read the introduction to the lesson, which presents the ideas of limited government and the rule of law. This introduction sets a context for reading about limited government and the rule of law in excerpts from four *Federalist* papers.

Developing the Lesson. Have students read the excerpt from *The Federalist* 23. Ask them to answer the questions at the end of the document, which is a means to check comprehension of main ideas and to stimulate interpretation of them in terms of the core concepts of this lesson—limited government and the rule of law.

After checking students' responses to questions about essay 23, ask them to read 51 by Madison. Have them answer the two questions at the end of the essay. Repeat this procedure with reference to essays 53 and 70.

As a comprehensive check of students' comprehension of main ideas in the four essays, require them to complete the exercise at the end of the lesson—"What Is Said About Limited Government and The Rule of Law in Essays 23, 51, 53, 70?" Correct answers are: 1. no, #23, #51, #70; 2. no, #70; 3. yes, #23, #51, #53. #70; 4. no, #53; 5. no, #53; 6. yes, #53.

Have students turn to the four exercises at the very end of the lesson. They should complete items 1-3 in preparation for classroom discussion.

Concluding the Lesson. Conduct a classroom discussion on items 1-3. Require students to support or explain answers by referring to pertinent parts of essays 23, 51, 53, 70. In general, ask students to give reasons for their answers and encourage students to question and challenge one another to ask for justifications or support for answers.

Assign item 4 as the final activity of this lesson. Ask students to write a brief essay (no more than 500 words) in response to this item. Ask them to use at least these sources in preparing the essay: *Federalist* papers used in this lesson, The Constitution, textbooks in history, government, or civics.

Call upon several students to read their essays to the class and ask other students to respond with constructive criticisms or support of the ideas expressed in the essays.

Discussion of item four should emphasize that limited government and the rule of law are core values in the American heritage and that the Constitution embodies these values.

LESSON 3:
LIMITED GOVERNMENT AND THE RULE OF LAW IN THE FEDERALIST, NUMBERS 23, 51, 53, 70

LIMITED GOVERNMENT and THE RULE OF LAW are principles of government and core civic values in the American heritage. Limited government means that officials cannot act arbitrarily when they make and enforce public decisions. In their roles as public officials, members of the government cannot simply do as they please. Rather, they are guided and limited by laws as they carry out the duties of their government offices. In the United States of America, the Constitution is the supreme law that guides and limits the exercise of power by government officials. Laws made in conformity with the Constitution also guide and limit the actions of government officials.

The rule of law means that neither government officials nor common citizens are supposed to break the law. Furthermore, persons accused of crime are supposed to be treated equally under the law and accorded due process in all official actions against them. Law governs the actions of all persons in the system, public officials and the citizenry, and from highest to lowest ranks in government and society.

Limited government and the rule of law are main characteristics of constitutional government in the United States. The rights and liberties of individuals are supposed to be protected by law against abuses of power by government officials. However, if constitutional limits on government are too strict, it will be too weak and duties will not be carried out effectively. A government that is too limited by law may not even be able to enforce laws and maintain public order and security. By contrast, if the government is too strong, or unlimited in its use of power, then the liberties of individuals may be lost and tyranny might prevail. An effective constitutional government is neither too powerful nor too weak. Legal powers are granted in the Constitution to enable the government to perform tasks the people expect of it. The Constitution places legal limits on the government's powers to protect liberties and rights of individuals against would-be tyrants or dictators. There is a workable balance between powers granted to government, in the name of the people, and limits on those powers on behalf of individual liberties and rights.

A workable balance is difficult to achieve between power sufficient to govern effectively and limits on power sufficient to protect liberties and rights of the people. On the eve of the Civil War, Abraham Lincoln asked despairingly: "Must a government, of necessity, be too strong for the liberties of its own people, or two weak to maintain its own existence?" During the 1780s, Hamilton, Madison, Jay, and other Federalists believed that government under the Articles of Confederation was too weak to maintain its own existence. However, Anti-federalists feared that the Constitution of 1787 might provide a government too strong for the liberties of the people. Authors of *The Federalist* argued that limited government and the rule of law—principles of government in the Constitution of 1787—would protect the rights and liberties of people from abuses of power by would-be tyrants. Hamilton and Madison discussed limited government and the rule of law in several essays of *The Federalist*. They argued that the best government is both "energetic" (strong enough to act decisively and effectively in the public interest) and "limited by law" to safeguard individual liberties and rights. Excerpts from four essays are presented below and on the following pages: 23 and 70 by Hamilton and 51 and 53 by Madison.

NUMBER 23: HAMILTON

THE necessity of a constitution, at least equally energetic with the one proposed . . . is the point. . . . Every view we may take of the subject . . . will serve to convince us that it is both unwise and dangerous to deny the federal government an unconfined authority in respect to all those objects which are intrusted to its management [specific grants of power enumerated in the Constitution]. It will indeed deserve the . . . vigil and careful attention of the people to see that it be modeled [limited] in such a manner as to admit of its being safely vested with the requisite powers. If any plan which has been, or may be, offered to our consideration should not . . . be found to answer this description, it ought to be rejected. A government, the constitution of which renders it unfit to be trusted with all the powers which a free *people ought to delegate to any government*, would be an unsafe and improper depositary of the NATIONAL INTERESTS. Wherever THESE can with propriety be confided, the co-incident powers may safely accompany them. . . . The POWERS [of the Constitution] are not too extensive for the OBJECTS of federal administration, or, in other words, for the management of our NATIONAL INTERESTS; nor can any satisfactory argument be framed to show that they are chargeable with such an excess. . . . Publius

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Reviewing Main Ideas in Essay 23

1. What is the main point of this essay?

2. What are two reasons presented by Hamilton to support the main point of this essay?

3. Find one example in this essay of Hamilton's views on limited government.

4. Find one example in this essay of Hamilton's views on the rule of law.

5. How does Hamilton answer the charges of critics of the Constitution of 1787 that it grants too much power to the government of the United States and therefore is not sufficiently limited to protect the rights and liberties of individuals?

NUMBER 51: MADISON

. . . the great security against a gradual concentration of . . . powers in [the government] . . . consists in giving . . . the necessary constitutional means and personal motives to resist encroachments. . . . It may be a reflection on human nature that such devices should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions [limited government based on the supreme law of a written constitution]. . . . Publius

Reviewing Main Ideas in Essay 51

1. What are Madison's views about how to achieve limited government and the rule of law?

2. What are the difficulties in creating a limited government that can also be an "energetic" government?

NUMBER 70: HAMILTON

. . . Energy in the executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property . . . ; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. . . .

. . . A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government.

Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic executive, it will only remain to inquire, what are the ingredients which constitute this energy? How far can they be combined with those other ingredients which constitute safety [provisions for limited government] in the republican sense [government in the name of the people by their elected representatives]? And how far does this combination [energetic government that is also limited by law] characterize the plan which has been reported by the convention? [In Hamilton's opinion, the Constituton of 1787 provided energetic government with sufficient limits on the powers of government to protect the rights and liberties of the people.]

The ingredients which constitute energy in the executive are unity [a single chief executive or President]; duration [a long enough term of office]; an adequate provision for its support; and competent powers. [Hamilton argued that these ingredients were included in the Constitution of 1787.]

The ingredients which constitute safety in the republican sense [provisions for limited government and the rule of law] are a due dependence on the people, and a due responsibility. . . . Publius

Reviewing Main Ideas in Essay 70

1. What advice does Hamilton offer about the value of "energy and power" in government?

2. What is the role of a chief executive or President in providing "energy and power" in government?

3. What negative consequences, according to Hamilton, would follow from ignoring his advice about an "energetic and powerful" government?

4. What does Hamilton say about "ingredients which constitute safety" in government (limited government)?

5. Does Hamilton argue for a balance between "ingredients which constitute safety" and "ingredients which constitute energy" in government? Explain.

NUMBER 53: MADISON

. . . The important distinction so well understood in America between a Constitution established by the people and unalterable by the government, and a law established by the government and alterable by the government seems to have been little understood and less observed in any other country. Wherever the supreme power of legislalation has resided, has been supposed to reside also a full power to change the form of the government. Even in Great Britain, where the principles of political and civil liberty have been most discussed, and where we hear most of the rights of the Constitution, it is maintained that the authority of the Parliament is transcendent and uncontrollable as well with regard to the Constitution as the ordinary objects of legislative provision. They have accordingly, in several instances, actually changed, by legislative acts, some of the most fundamental articles of the government. . . . An attention to these dangerous practices has produced a very natural alarm in the votaries [supporters] of free government, of which frequence of elections is the cornerstone; and has led them to seek for some security to liberty, against the danger to which it is exposed. Where no Constitution, paramount to the government . . . existed . . . no constitutional security, similar to that established in the United States, was to be attempted. Some other security . . . was to be sought for; and what better security would the case admit than that of selecting and appealing to some simple and familiar portion of time as a standard? . . . The most simple and familiar portion of time applicable to the subject was that of a year; and hence the doctrine . . . to erect some barrier against . . . unlimited government, that the advance toward tyranny was to be calculated by the distance of departure from the fixed point of annual elections. But what necessity can there be of applying this expedient to a government limited, as the federal government will be, by the authority of a paramount Constitution? Or who will pretend that the liberties of the people of America will not be more secure under biennial elections, unalterably fixed by such a Constitution, than those of any other nation would be, where elections were annual, or even more frequent, but subject to alterations by the ordinary power of the government? . . . Publius

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Reviewing Main Ideas in Essay 53

Madison discusses: "The important distinction . . . between a Constitution established by the people and unalterable by the government, and a law established by the government and alterable by the government. . . ."

1. What is the distinction to which he refers?
2. Why is this idea a basic element of Madison's position on limited government and the rule of law?

What Is Said About Limited Government and The Rule of Law in The Federalist Papers—Numbers 23, 51, 53, 70?

Read each of the following statements (1-6) and decide whether or not each statement is a correct (accurate) description or interpretation of ideas about limited government and the rule of law as presented in *The Federalist* 23, 51, 53, 70. If so, answer YES. If not, answer NO. Identify the specific essay or essays by number (23, 51, 53, 70) with evidence to support your answer to each item, 1-6. Be prepared to indicate paragraphs or sentences that support each answer. If the statement cannot be judged correct or incorrect, based on the content of *The Federalist*, numbers 23, 51, 53. 70, then answer UNCERTAIN.

1. It is NOT possible to have a government that is both "energetic" and limited in the exercise of power.
YES___ NO___ UNCERTAIN___ ESSAY #___

2. A government with an energetic or powerful chief executive is a sure sign of tyranny or despotism.
YES___ NO___ UNCERTAIN___ ESSAY #___

3. The Constitution of 1787 provides a practical balance between an energetic government and government limited by law sufficiently to protect the rights and liberties of individuals.
YES___ NO___ UNCERTAIN___ ESSAY #___

4. A written Constitution created by a legislature and alterable by majority vote of the legislature, as the supreme representative of the people, is a certain guardian of individual liberties and provider of limited government.
YES___ NO___ UNCERTAIN___ ESSAY #___

5. The best guarantee of individual rights and liberties and guardian against tyranny is annual elections of major government officials.
YES___ NO___ UNCERTAIN___ ESSAY #___

6. A paramount written constitution is a means to enable the government to maintain order and security in a society and to protect individuals in the society against tyranny and oppression.
YES___ NO___ UNCERTAIN___ ESSAY #___

Examining Ideas On Limited Government and The Rule of Law

Refer to the preceding excerpts from *The Federalist* 23, 51, 53, 70 to find ideas and information on which to base answers to the following questions. Be prepared to justify or give reasons for answers with references to specific parts of these essays.

1. a. According to Hamilton and Madison, what is limited government and the rule of law? (How does the idea of "energetic government" fit into their definitions of limited government?) b. How do Madison and Hamilton justify their ideas on limited government and the rule of law as superior to ideas of their opponents?

2. Compare Hamilton's ideas on how to achieve limited and effective government with the ideas of Madison on this subject. Refer to essays 51 and 53 by Madison and essays 23 and 70 by Hamilton. What are similarities and differences in the ideas of Madison and Hamilton on the role of the people and the uses of a written constitution as means to achieve limited government and the rule of law?

3. Refer to Articles I, II, III, and VI of the Constitution. a. Find at least five examples that show how the Constitution limits the government in order to provide protection against tyranny. b. Find at least five examples

that show how the Constitution provides for "energetic government" as called for by Hamilton in *The Federalist* 23 and 70. c. How does the Constitution of 1787 provide means for balancing powers needed for an "energetic" government and limitations on those powers needed to protect individual rights and liberties?

4. According to authors of *The Federalist*, an excellent constitution provides government that is both energetic and limited. a. What are characteristics of a government that fits this statement? b. What is the value of a frame of government that fits this statement? (Why is it to be desired or valued over alternatives?)

TEACHING PLAN FOR LESSON 4: FEDERALISM AND REPUBLICANISM IN THE FEDERALIST, NUMBERS 9 AND 39

Preview of Main Points

The purpose of this lesson is to increase students' knowledge of how federalism and republicanism are treated in essays 9 and 39 of *The Federalist*. Students are challenged to think about the meaning and value of federalism and republicanism as basic principles of government in the Constitution of the United States.

Curriculum Connection

This lesson can be used in combination with treatments of federalism and of comparative forms of government in standard civics and government textbooks. The lesson also fits the standard American history textbook chapter on the writing and ratification of the Constitution.

Objectives

Students are expected to:

(1) Identify and comprehend ideas on federalism and republicanism in *The Federalist* 9 and 39.
(2) Examine and explain ideas on federalism and republicanism in *The Federalist* 9 and 39.
(3) Find examples of federalism and republicanism in the Constitution and explain how they fit ideas expressed by Madison and Hamilton in *The Federalist* 9 and 39.
(4) Appraise statements about federalism and republicanism in terms of ideas in *The Federalist*.
(5) State and justify a position on the value of a federal republic as defined in *The Federalist*.

Suggestions for Teaching the Lesson

Opening the Lesson. Ask students: What is a federal republic? Is the USA a federal republic? Discuss these questions briefly and have students read the introduction to the lesson to reinforce knowledge of federalism and republicanism that is brought to the lesson from other sources.

Go over the table, included in the lesson, which presents examples of the division of powers between the national government and state governments in the American system of federalism.

Developing the Lesson. Have students read the excerpts from *The Federalist*, 9 and 39, which are included in this lesson. Have them answer the questions at the end of each reading, as a check on their comprehension of main ideas.

Check students' comprehension of main ideas in the reading assignment by requiring them to complete the exercise at the end of the lesson, "What Is Said About Federalism and Republicanism in The Federalist Papers?" Following are numbers of statements in the list of this exercise that agree with *The Federalist:* 6, 8, 9, 10, 11, 12, 13, 14, 16, 19.

Have students turn to the exercises on the last page of the lesson. Require students to complete items 1-2 for a classroom discussion.

Concluding the Lesson. Conduct a classroom discussion on items 1-2 in the exercises at the end of the lesson. Require students to support or explain their answers by referring to pertinent parts of *The Federalist* 9 and 39. In general, ask students to give reasons for their answers and encourage students to challenge the answers and reasons of their peers whenever they think that insufficient justification has been provided for an answer.

Assign item 3 as the final activity of this lesson. Ask students to write a brief essay (no more than 500 words) in response to this activity. Advise students to use these sources in preparing their essays: essays 9 and 39 of *The Federalist*, the Constitution, and their textbooks in civics, government, and history. Select two or three students to read their essays to the class. Assign other students the responsibilty of making a formal response to one of the essays. Use the formal responses as stimulators of broader class discussion of ideas presented in the essays. Emphasize that the responses to the essays might be affirmative or critical or some combination of the two; or the responses might mainly introduce additional or alternative ideas into the discussion.

Discussions of items 1-3 should emphasize the interrelated civic values of limited government, the rule of law, liberty under law, and social order as desired ends or goals of federalism and republicanism in government.

NOTE: Several other essays in *The Federalist* include discussions of federalism, in combination with other topics. Notable essays, which might be pointed out to students are numbers 10, 16, 37, 45, and 51.

LESSON 4:
FEDERALISM AND REPUBLICANISM IN THE FEDERALIST, NUMBERS 9 and 39

The government of the United States of America is a federal republic. The authors of *The Federalist* and their Antifederalist critics agreed that federalism and republicanism are desirable attributes of a government. They disagreed about the merits of the Constitution of 1787 as a frame of government that would provide a workable federal republic. Alexander Hamilton and James Madison argued in several *Federalist* papers that the type of federalism and republicanism provided by the Constitution was far superior to the alternatives desired by their critics. What were the terms of this dispute? What is a federal republic? What are federalism and republicanism?

A republic is a type of government that functions through elected representatives of the people. A republic is distinguished from a pure democracy, a form of government in which the people govern directly instead of through representatives elected by them. In the world of 1787, aristocracies and monarchies were the predominant forms of government. In contrast to a republic, these other types of governments function without representation or participation by the common people. In an absolute monarchy, one person (king or queen) rules; and in an aristocracy, power is exercised by a small elite group of nobles or aristocrats. Power usually is based on heredity in a monarchy or aristocracy. Republicanism refers to beliefs and practices that support a republic instead of monarchy, aristocracy, or other non-republican forms of government.

In a federal republic, there is division of power between a central or national (federal) government and several state governments within the nation. In the United States of America, for example, power is divided between a national government, which is headquartered in Washington, D.C., and 50 state governments. Unitary government is the opposite of federalism. In a unitary government the central or national government has all power. Regional or local governments may be created to help the central government carry out laws. However, these lower levels of government do not share power with the central government. Rather, they are only parts of the central government and may be abolished by it. Japan, for example, has a unitary system of government. The central government is headquartered in Tokyo. There are several regional units of government and many local governments within each region. None of the regional or local governments has any power to act independently of the central government.

In the American federal system, the national (federal) government has certain powers that are granted only to it in the Constitution. The 50 state governments also have powers that the national government is not supposed to exercise. *See the table at the end of the lesson for examples of powers that are supposed to be exercised by either the federal or state governments in the American federal system.* The table also shows that some powers are shared by both the national and state governments. Notice in the table that some powers are denied strictly to the federal government, some are denied to the state governments, and some to both levels of government. In the American federal system, the powers of the national government are limited. However, within its field or range of powers, the national or federal government is supreme. The states can neither ignore nor contradict federal laws and the Constitution, which is the supreme law.

The core idea of American federalism is two levels of government (national and state) that exercise power separately and directly on the people at the same time. Thus, under federalism, the state of Indiana has authority over its residents, but so does the federal government in Washington, D.C. Indiana residents must obey the laws of their state government and their federal government.

Federalism is a central principle of the Constitution, but the balance of power between state and national governments was not defined exactly at the Convention of 1787. Since then, the rights and powers of states in relationship to the federal government have generated constitutional issues and debates.

Hamilton and Madison discussed the principles of federalism and republicanism in several essays of *The Federalist*. Excerpts from two essays, number 9 by Hamilton and number 39 by Madison, are presented below and on the following pages.

NUMBER 9: HAMILTON

. . . A distinction, more subtle than accurate, has been raised between a confederacy and a consolidation of the States. The essential characteristic of the first [confederacy] is said to be the restriction of its authority to the members in their collective capacities [the states], without reaching to the individuals of whom they are composed. It is contended that the national council ought to have no concern with any object of internal administration. An exact equality of suffrage [voting power in government] between the members [states] has also been insisted upon as a leading feature of a confederate government. These positions are, in the main, arbitrary; they are supported neither by principle nor precedent. It has indeed happened that governments of this kind have generally operated in the manner which the distinction . . . supposes to be inherent in their nature; but there have been in most of them extensive exceptions to the practice, which serve to prove . . . that there is no absolute rule on this subject. . . . as far as the principle contended for has prevailed [as in government under the Articles of Confederation], it has been the cause of incurable disorder and imbecility in the government. The definition of a confederate republic seems simply to be . . . an association of two or more states into one state. The extent, modifications, and objects of the federal authority are mere matters of discretion. So long as the separate organization of the members [states] be not abolished; so long as it exists, by a constitutional necessity, for local purposes; though it should be in perfect subordination to the general authority of the union [federal government], it would still be, in fact and in theory, an association of states, or a confederacy. The proposed constitution, so far from implying an abolition of the State governments, makes them constituent parts of the national sovereignty, by allowing them a direct representation in the Senate, and leaves in their possession certain exclusive and very important portions of sovereign power. This fully corresponds, in every rational import of the terms, with the idea of a federal government. . . . Publius

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Reviewing Main Ideas in Essay 9

1. What is Hamilton's main point about the relationship of the government of the United States to the several state governments in the Constitution of 1787?
2. Identify at least two reasons that Hamilton presents in support of his main point.
3. What is Hamilton's argument against those who favored the system of government under the Articles of Confederation?
4. What is Hamilton's definition of a federal government?

NUMBER 39: MADISON

. . . we may define a republic to be . . . a government which derives all its powers directly or indirectly from the great body of the people and is administered by persons holding their offices during pleasure for a limited period, or during good behavior. It is *essential* to such a government that it be derived from the great body of the society, not from an inconsiderable proportion or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans and claim for their government the honorable title of republic. It is *sufficient* for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified. . . .

On comparing the Constitution planned by the convention with the standard here fixed, we perceived at once that it is, in the most rigid sense, conformable to it. . . .

. . . In order to ascertain the real character of the government, it may be considered in relation to the foundation on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the extent of them; and to the authority by which future changes in the government are to be introduced.

On examining the first relation, it appears, on one hand, that the Constitution is to be founded on the assent and ratification of the people of America, given by duputies elected for the special purpose; but, on the other that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each State—the authority of the people themselves. The act, therefore, establishing the Constitution will not be a *national* but a *federal* act. . . .

The next relation is to the sources from which the . . . powers of government are to be derived. The House of Representatives will derive its powers from the people of America; and the people will be represented in the same proportion and on the same principle as they are in the legislature of a particular State. So far the government is *national,* not *federal*. The Senate, on the other hand, will derive its powers from the States as political and coequal societies; and these will be represented on the principle of equality in the Senate, as they now are in the exisiting Congress [under the Articles of Confederation]. So far the government is *federal,* not *national*. . . . From this aspect of the government it appears to be of a mixed character, presenting at least as many *federal* as *national* features.

The difference between a federal and national government, as it relates to the operation of the government, is by the adversaries of the plan of the convention supposed to consist in this, that in the former, the powers operate on the political bodies composing the Confederacy [the states] in their political capacities; in the latter, on the individual citizens composing the nation in their individual capacities. On trying the Constitution by this criterion, it falls under the *national* not the *federal* character. . . .

But if the government be national with regard to the *operation* of its powers, it changes its aspect . . . in relation to the extent of its powers . . . a national government involves . . . an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature. . . . In this relation, then, the proposed government cannot be deemed a *national* one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution. . . . Some such tribunal is . . . essential to prevent an appeal to the sword and a dissolution of the compact. . . .

. . . the authority by which amendments [to the Constitution] are to be made, we find . . . neither wholly national nor wholly *federal*. Were it wholly national, the supreme and ultimate authority would reside in the *majority* of the people of the Union. . . . Were it wholly federal . . . the concurrence of each State in the Union would be essential to every alteration that would be binding on all. The mode provided by the plan of the convention is not founded on either of these principles. In requiring more than a majority, and . . . in computing the proportion by *States*, not by *citizens*, it departs from the national and advances towards the federal character; in rendering the concurrence of less than the whole number of states sufficient, it loses again the *federal* and partakes of the *national*. . . .

The proposed Constitution . . . is, in strictness, neither a national nor a federal constitution, but a composition of both.

Publius

Reviewing Main Ideas in Essay 39

1. What is Madison's definition of a republic?
2. Explain Madison's definition of federalism, which is based on the idea that the Constitution of 1787 is "a composition of both" federal and national characteristics?

What is Said About Federalism and Republicanism in The Federalist Papers—Numbers 9 and 39?

Which of the following statements agree with ideas presented in *The Federalist* 9 and 39? *Place a checkmark in the space next to each statement that agrees with ideas in essay* 9 and essay 39. Be prepared to support and explain your choices by referring to specific parts of essays 9 and 39.

____ 1. The Constitution establishes an alliance of sovereign states.

____ 2. Under the Constitution, the states give up all powers to act independently or separately from one supreme national government.

____ 3. The Constitution creates a federal system in which the state governments retain power to accept or reject laws of the federal government.

____ 4. The Constitution establishes a union of states in which the government of the United States is directly and wholly reponsible to the several state governments.

____ 5. Republicanism is the same as pure democracy.

____ 6. In a federal republic, state governments within the nation have certain powers that they exercise independently of the national government.

____ 7. In a "true" federal republic, the national or federal government should have power to act directly on the several state governments, but NOT on the people of these states.

____ 8. The process used for ratification of the Constitution was a pure example of federalism.

____ 9. The procedures for amendment, in Article V of the Constitution, include both federal and national characteristics.

____ 10. The sources of power of members of Congress (House of Representatives and Senate) are examples of the mixed characteristics of the government, which includes both federal and national features.

____ 11. A unitary system of government is wholly national in character.

____ 12. A government based purely on rule by the majority of the people of a nation is wholly national in character.

____ 13. A government that is totally responsive to the several states within the nation is wholly or purely federal in character.

____ 14. The federal republic of the United States is NOT an example of pure or unmixed federalism.

____ 15. A republican form of government is always a federal form of government.

____ 16. The government of the United States under the Articles of Confederation fits Madison's definition of a republic.

____ 17. The government of the United States under the Articles of Confederation fits Madison's and Hamilton's definition of a federal republic.

____ 18. The government of Great Britain in the 1780s fits Madison's definition of a federal republic.

____ 19. The several state governments of the United States, in the 1780s and today, fit Madison's and Hamilton's definition of a republic.

___ 20. The government of the United States under the Constitution of 1787 is a national consolidation.

Examining Ideas About Federalism and Republicanism

Refer to the preceding excerpts from *The Federalist* 9 and 39 to find information and ideas on which to base answers to the following questions. Be prepared to justify or support answers with references to specific parts of these essays.

1. Refer to Articles IV and VI of the Constitution. Find at least five examples that show how government under the Constitution of 1787 conformed to the definition of federal republic of *The Federalist.*

2. Compare and contrast the views of Madison and Hamilton on federalism, as indicated by essay 9 and essay 39. Identify at least one similarity and one difference in their ideas on federalism.

3. a. How are the civic values of limited government, the rule of law, liberty, and social order associated with ideas on federalism and republicanism expressed in *The Federalist*, numbers 9 and 39? (How does a federal republic contribute to achieving these civic values or desired goals of government?)

TABLE 1
Examples of How the Constitution Divides Powers

	TO NATIONAL GOVERNMENT	TO STATE GOVERNMENTS	TO BOTH LEVELS OF GOVERNMENT
POWERS GRANTED	To coin money To conduct foreign relations To regulate commerce with foreign nations & among states To provide an army and a navy To declare war To establish courts inferior to the Supreme Court To establish post offices To make laws necessary and proper to carry out the foregoing powers	To establish local governments To regulate commerce within a state To conduct elections To ratify amendments to the federal Constitution To take measures for public health, safety, & morals To exert powers the Constitution does not delegate to the national government or prohibit the states from using	To tax To borrow money To establish courts To make and enforce laws To charter banks and corporations To spend money for the general welfare To take private property for public purposes, with just compensation
POWERS DENIED	To tax articles exported from one state to another To violate the Bill of Rights To change state boundaries	To tax imports or exports To coin money To enter into treaties To impair obligations of contracts To abridge the privileges or immunities of citizens	To grant titles of nobility To permit slavery To deny citizens the right to vote because of race, color, or previous servitude To deny citizens the right to vote because of sex

TEACHING PLAN FOR LESSON 5: SEPARATION OF POWERS WITH CHECKS AND BALANCES IN THE FEDERALIST, NUMBERS 47, 48, 51

Preview of Main Points

The purpose of this lesson is to increase students' knowledge of the concept of separation of powers and a related concept, checks and balances, as expressed in *The Federalist*. The lesson features excerpts from three papers of *The Federalist*, 47, 48, and 51. Students are asked to reflect upon the meaning and value of separation of powers and checks and balances as basic principles of government in the Constitution of the United States.

Curriculum Connection

This lesson can be used in combination with treatments of separation of powers and checks and balances in civics and government textbooks. It can be used to supplement the standard American history textbook chapter on the writing and ratification of the Constitution.

Objectives

Students are expected to:

(1) Identify and comprehend ideas on separation of powers in *The Federalist* 47, 48, 51.

(2) Examine and explain ideas on separation of powers in *The Federalist* 47, 48, 51.

(3) Find examples of separation of powers in the Constitution and explain how they fit ideas expressed by Madison in *The Federalist*.

(4) Evaluate ideas on separation of powers in terms of criteria in *The Federalist*.

(5) State and justify a position about the value of separation of powers as a basic principle of government in the Constitution.

Suggestions for Teaching the Lesson

Opening the Lesson. Ask students: What is separation of powers in government? What is checks and balances in government? Have students read the first part of the lesson to follow up on the opening discussion and to reinforce knowledge of separation of powers that they bring to the lesson from other sources.

Take a few moments to go over the diagram at the end of the lesson, which illustrates the related concepts of separation of powers and checks and balances. Discuss this diagram to make certain that students have a rudimentary knowledge of separation of powers and checks and balances.

Developing the Lesson. Have students read the excerpts from *The Federalist*, numbers 47, 48. Check students' comprehension of main ideas in the reading assignment by requiring them to complete the exercise at the end of the two documents. Statements in item 3 that agree with Maidson are: b and e.

Assign the excerpt from essay 51 as the next reading assignment.

Require students to complete the exercises at the end of this document as a check on their comprehension of main ideas in the reading.

Have students turn to the five exercises on the final pages of the lesson. Have students complete items 1-4 in preparation for a classroom discusssion.

Concluding the Lesson. Conduct a classroom discussion on items 1-4 in the set of exercises at the end of the lesson. Require students to support or explain their answers by referring to pertinent parts of *The Federalist* 47, 48, and 51. In general, ask students to give reasons for their answers and encourage students to challenge the answers and reasons of their peers whenever they think that insufficient justification has been provided for an answer.

Assign item 5 as the final activity of this lesson. Ask students to write a brief (no more than 500 words), cogent essay in response to this activity. Advise students to use these sources, at least, in writing this essay: *The Federalist*, the Constitution, and their textbooks in civics, government, and history.

Select two or three students to read their essays to the class. Assign other students the responsibility of making a formal response to one of the easays. Use the formal responses as stimulators of broader class discussion of ideas presented in the essays. Emphasize that the responses to the essays might be affirmative or critical or some combination of the two; or the responses might mainly introduce additional or alternative ideas into the discussion.

Discussions of items 1-5 should emphasize the interrelated civic values of limited government, the rule of law, and liberty under law as desired ends or goals of separation of powers as a basic principle of government in the Constitution.

NOTE: Other essays in *The Federalist* that include discussion of separation of powers, in combination with other topics, are numbers 9, 37, 49, 66, 75, and 78. Interested students might be referred to one or more of these essays.

LESSON 5:
SEPARATION OF POWERS WITH CHECKS AND BALANCES IN THE FEDERALIST, NUMBERS 47, 48, 51

Separation of powers, a major principle of the Constitution, is the distribution of power among three branches of government: (1) the legislative, (2) the executive, and (3) the judicial. The legislative branch (Congess) has power, according to Article I of the Constitution, to make certain kinds of laws. In Article II, the Constitution says that the executive branch (headed by the President) has power to enforce or carry out laws. The judicial branch (headed by the Supreme Court) is established in Article III of the Constitution to interpret and apply the law in federal court cases.

The separation of power to make law, enforce law, and interpret law, among three branches of government, is a means to limited government. It prevents any person or group in the government from having enough power to become a tyrant and oppress the people.

However, Antifederalists criticized the Constitution, because it does not completely separate powers of government among the three branches. They pointed out, for example, that the President takes part in lawmaking through the veto, the chief executive's power to reject a law passed by Congress. Furthermore, the legislative branch is involved in the exercise of executive power through its power to approve the President's appointments of executive officials. These are merely two examples, of many, to show that the Constitution permits sharing of power among the three branches, which the critics said was a weakness.

James Madison responded to the critics by pointing to another principle of government in the Constitution, checks and balances, whereby each branch of the government has power to limit or check the actions of the others. In this manner, the primary goal of limited government is served. For example, the President can check the power of Congress with the veto. But the President's veto can be overturned by a subsequent 2/3 vote of Congress. This is one of several checks exercised by one branch over the others to keep the power of government balanced and limited. (See the Diagram at the end of the lesson that illustrates the related principles of separation of powers and checks and balances.) In combination, the principles of separation of powers and checks and balances provide a government of separated branches that share power. Thus, each separate branch of the government has some influence over the actions of the others, and no branch can exercise its duties without some cooperation from the others.

Hamilton and Madison replied in several essays of *The Federalist* to criticisms of the Constitution's provisions for separation of powers. Excerpts from three essays by Madison, numbers 47, 48, 51, are presented in this lesson. What is Madison's definition of separation of powers? How does Madison justify his definition?

NUMBER 47: MADISON

. . . One of the principal objections . . . to the Constitution is its supposed violation of the political maxim that the legislative, executive, and judiciary departments ought to be separate and distinct. . . .

No political truth is certainly of greater intrinsic value. . . . The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. . . .

The oracle who is always consulted and cited on this subject is the celebrated Montesquieu. . . . [He] did not mean that these departments [three branches of government] ought to have no partial agency in, or no control over [checks of one branch on another] the acts of each other. His meaning . . . can amount to no more than this, that where the whole power of one department is exercised by the same hand, which possess the whole power of another department, the fundamental principles of a free constitution are subverted. . . .

[Montesquieu says] . . . "When the legislative and executive powers are united in the same person or body, there can be no liberty, because . . . the same monarch or senate . . . [might] enact tyrannical laws to execute them in a tyrannical manner." Again: "Were the power of judging joined with the legislative, the life and liberty of the subjects would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with all the violence of the oppressor." Some of these reasons are more fully explained in other passages; but briefly stated . . . they sufficiently establish the meaning which we have put on this celebrated maxim of this celebrated author [establish separation of powers among three branches of government, but also some sharing of powers to enable each branch to stop the others from having too much power].

If we look into the constitutions of the several States we find . . . there is not a single instance in which the several departments of power have been kept absolutely separate and distinct. . . . [State constitutions follow the principle of separation of powers with checks and balances; each branch has some part in the duties and powers of the other branches].

. . . What I have wished to evince is that the charge brought against the proposed Constitution of violating the sacred maxim of free government is warranted neither by the real meaning annexed to that maxim by its author [Montesquieu], nor by the sense in which it has hitherto been understood in America [as exemplified in the constitutions of the several states of the United States]. This interesting subject will be resumed in the ensuing paper. Publius

NUMBER 48: MADISON

. . . unless these departments [three branches of government] be so far connected and blended as to give to each a constitutional control over the others [checks and balances], the degree of separation . . . essential to a free government . . . can never in practice be duly maintained.

It is agreed . . . that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident that none of them ought to possess . . . an overruling influence over the others in the administration of their respective powers. It will not be denied that power is of an encroaching nature and that it ought to be effectively restrained from passing the limits assigned to it. . . .

Will it be sufficient to mark, with precision, the boundaries of these departments in the constitution of the government, and to trust to the parchment barriers against the encroaching spirit of power?

. . . a mere demarcation on parchment of the constitutional limits of the several departments is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands. Publius

Reviewing Ideas in Essays 47 and 48

1. What is Madison's definition of separation of powers? (How is the related idea of checks and balances linked to separation of powers in Madison's definition?)

2. How is separation of powers with checks and balances connected to limited government and protection of individual rights and liberties?

3. Examine the following statements and decide which items agree or disagree with Madison's ideas. Make a checkmark next to each statement that agrees with Madison. Refer to essays 47 and 48 to explain and support your answers.

____ a. Separation of powers in the Constitution means that each branch of government is detached totally from the other branches in exercise of powers and duties.

____ b. Separation of powers in the Constitution involves sharing of duties and powers in government as a means to limited government.

____ c. The system of checks and balances in the Constitution interferes with and undermines separation of powers as a means to limited government.

____ d. Madison disagrees with the ideas of Montesquieu on separation of powers.

____ e. State governments in the United States practiced the principle of separation of powers as defined by Madison.

NUMBER 51: MADISON

To what expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments [branches of government] as laid down in the Constitution? The only answer . . . is . . . by so contriving the interior structure of the government [designing a system of checks and balances] as that its several constituent parts may, by their mutual relations, be the means of keeping each other in the proper places. . . .

But the great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means [checks and balances] and personal motives to resist encroachments of the others. The provision for defense must . . . be [suited] . . . to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature that such devices should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions [design of a constitutional system of checks and balances].

This policy of supplying by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other—that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State. . . .

But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this . . . is to divide the legislature into different branches [Senate and House of Representatives] and to render them, by different modes of election and different principles of action, as little connected with each other as [possible]. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require . . . that it should be fortified. An absolute negative [veto power] on the legislature appears . . . to be the natural defense with which the executive magistrate should be armed. [But this veto power could be misused if not checked in turn by the legislature.]

. . . in a single republic [unitary government] all the power . . . is submitted to . . . a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America [federal system of government], the power. . . is first divided between two distinct governments [federal and state], and then the portion allotted to each subdivided among distinct and separate departments [three separate branches of government with checks and balances]. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself. . . . Publius

Reviewing Ideas in Essay 51

Would Madison have agreed with the statements below? Refer to essay 51 (and ideas in 47, 48) to explain answers.

1. Government officials elected freely by a majority vote of the people should be trusted to have all powers of government, unseparated and unchecked.

2. The main check or control on the power of government is active and intelligent participation of the people.

Examining Ideas on Separation of Powers

Refer to the preceding excerpts from *The Federalist* 47, 48, 51 to find ideas and information on which to base answers to the following questions. Be prepared to support answers with references to specific parts of these essays.

1. In *The Federalist* 47, Madison says: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." What does this statement say about the value of separation of powers? Do you agree with this statement? Explain

2. Refer to Articles I, II, and III of the Constitution of the United States. a. Find at least three examples that show how the powers of government are separated among three distinct branches of government. b. Find at least three examples of sharing of powers among the three branches of government that show how the powers of the federal government are not completely separated. c. Does the structure of government in Articles I, II, and III of the Constitution fit Madison's definition of separation of powers? Explain.

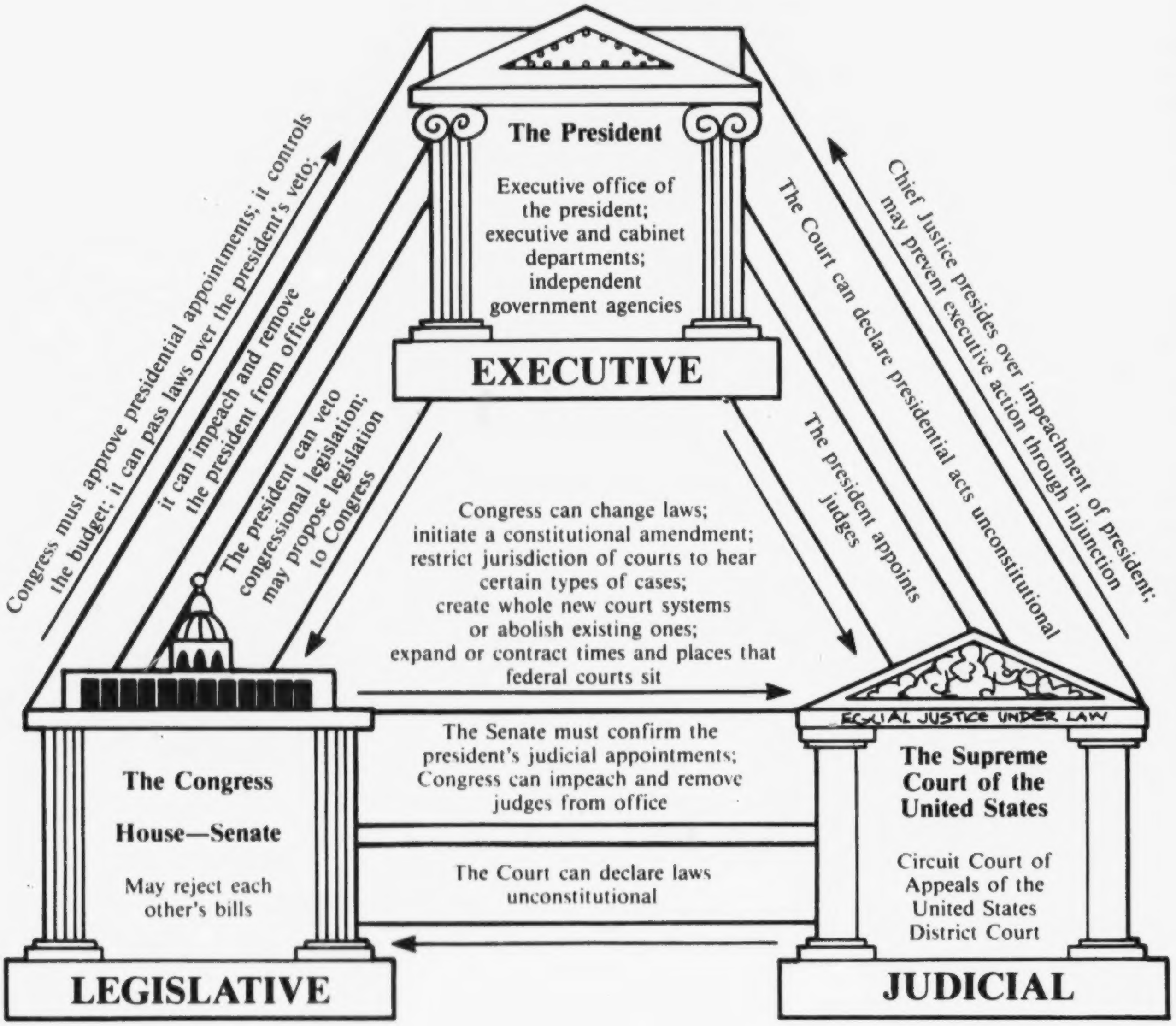
3. In 1952 (*Youngstown Company v. Sawyer*), Supreme Court Justice Robert Jackson said: "While the Constitution diffuses power the better to secure liberty, it also contemplates that the practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity." Does this statement by Justice Jackson agree with Madison's view of separation of powers expressed in *The Federalist*? Explain

4. In 1789, at the first session of Congress, several members wanted to add the following amendment to the Constitution: "The powers delegated by this constitution are appropriated to the departments to which they are respectively distributed so that the legislative department shall never exercise the powers vested in the executive or judicial, nor the executive exercise the powers vested in the legislative or judicial, nor the judicial exercise the powers vested in the legislative or executive departments." This proposed amendment to the Constitution was voted down in Congress. Does this proposed amendment agree with ideas on separation of powers favored by authors of *The Federalist*?

5. a. According to authors of *The Federalist*, what is the value of separation of powers as a principle of government in the Constitution of the United States? (What desirable or valued ends or goals are likely to be gained through separation of powers in government? What undesirable or negative ends or consequences are likely to be avoided through separation of powers in government?) b. Do you agree with the position of Madison in *The Federalist* about the definition and value of separation of powers as a basic principle of government in the Constitution?

DIAGRAM 1

Separation of Powers and Checks and Balances



The President

Executive office of the president; executive and cabinet departments; independent government agencies

Congress must approve presidential appointments; it controls the budget; it can pass laws over the president's veto; it can impeach and remove the president from office

The president can veto congressional legislation; may propose legislation to Congress

Chief Justice presides over impeachment of president; may prevent executive action through injunction

The Court can declare presidential acts unconstitutional

The president appoints judges

Congress can change laws; initiate a constitutional amendment; restrict jurisdiction of courts to hear certain types of cases; create whole new court systems or abolish existing ones; expand or contract times and places that federal courts sit

The Senate must confirm the president's judicial appointments; Congress can impeach and remove judges from office

The Court can declare laws unconstitutional

The Congress

House—Senate

May reject each other's bills

The Supreme Court of the United States

Circuit Court of Appeals of the United States District Court

TEACHING PLAN FOR LESSON 6:
JUDICIAL REVIEW IN THE FEDERALIST, NUMBERS 78, 80, 81

Preview of Main Points

The purpose of this lessons is to increase students' knowledge of the treatment of judicial review in *The Federalist.* This lesson features excerpts from three essays, numbers 78, 80, and 81. Students are challenged to think about the meaning and value of judicial review and an independent judiciary as main ideas in the Constitution and the American civic heritage.

Curriculum Connection

This lesson can be used in combination with chapters on the judicial branch of government in civics and government textbooks. The lesson also fits standard American history textbook chapters on the period when the Constitution was written and ratified.

Objectives

Students are expected to:

(1) Identify and comprehend ideas on judicial review and an independent judiciary in *The Federalist* 78, 80, and 81.

(2) Examine and explain ideas on judicial review and an independent judiciary in *The Federalist* 78, 80, and 81.

(3) Find and interpret examples of duties and powers of the judicial branch in Articles III and VI of the Constitution.

(4) Examine the interaction of the judicial branch with the other two branches of federal government in the system of checks and balances.

(5) Appraise statements about judicial review in terms of ideas in *The Federalist.*

(6) State and justify a position on the value of judicial review and an independent judiciary presented in *The Federalist.*

Suggestions for Teaching the Lesson

Opening the Lesson. Ask students: What is judicial review? How is judicial review related to limited government and the rule of law? Have students read the introduction to the lesson which presents the meaning of judicial review. This introduction sets a context for reading about judicial review and an independent judiciary in excerpts from three *Federalist essays*.

Developing the Lesson. Have students read the excerpts from *The Federalist* 78, 80, 81 in this lesson.

Check students' comprehension of main ideas in the reading assignment by requiring them to complete the first exercise at the end of the lesson. Following are correct answers to this exercise: 1. no, #78 and #81; 2. uncertain; 3. yes, #78 and #81; 4. no, #80; 5. yes, #81.

Have students turn to the seven exercises at the end of the lesson. Have students complete items 1-6 in preparation for classroom discussion.

Concluding the Lesson. Conduct a classroom discussion of items 1-6 in the set of exercises at the end of the lesson. Require students to support or explain answers by referring to pertinent parts of *The Federalist.* In general, ask students to give reasons for their answers and encourage students to question and challenge one another to ask for justifications or support for answers.

Assign item 7 as the final activity of this lesson. Ask students to write a brief essay (no more than 500 words) in response to this item. Advise students to use these sources, at least, in writing this essay: *The Federalist*, the Constitution, and their textbooks in civics, government, and history.

Call upon several students to read their essays to the class and ask other students to respond with constructive criticisms or support of the ideas expressed in the essays.

LESSON 6:
JUDICIAL REVIEW IN THE FEDERALIST, NUMBERS 78, 80, 81

JUDICIAL REVIEW is the practice by judges in courts of law of appraising acts of the legislative and executive branches of government to decide whether they are in conflict with the Constitution. If so, the judges have power to declare them unconstitutional or null and void. All courts, federal and state, may practice judicial review. The Supreme Court of the United States, however, has final say on whether laws or actions violate or fit the U. S. Constitution.

Judicial review is based on three ideas: (1) the Constitution is the supreme law, (2) acts contrary to the Constitution are null and void, and (3) judges in courts of law are responsible for determining if acts violate or agree with the Constitution. The diagram at the end of the lesson shows how a court case may proceed to the Supreme Court.

Judicial review, one of the most important ideas of government in the United States, is not mentioned in the Constitution. However, before 1787, judicial review was practiced by courts in several of the American states to overturn laws that conflicted with the state constitution. Furthermore, when the Founders wrote the Constitution, few doubted that they intended the federal courts to have authority to declare state laws unconstitutional. However, the Constitution did not indicate clearly that the Founders intended the Supreme Court to have the same power to review acts of Congress or the President.

During debate over ratification of the Constitution, Federalists argued that the Constitution implicitly gave the Supreme Court the power of judicial review, even if it did not state the delegation of this power explicitly. Antifederalists disagreed with the Federalist position on judicial review. They feared that the practice of judicial review would give the federal courts too much power. They argued that there would be no sufficient checks or limits on this power. One Antifederalist, using the pen name of Brutus, wrote: "I question whether the world ever saw, in any period of it, a court of justice invested with such immense powers, and yet placed in a situation so little responsible."

Thomas Jefferson argued against extending the practice of judicial review to the executive and legislative branches of the federal government. He wanted each branch of government to interpret the meaning of the Constitution independently. Thus, Congress would decide for itself whether its actions conflicted with the Constitution.

Alexander Hamilton argued strongly for judicial review in *The Federalist*. He wanted judicial review to be applied to actions of the states and to the executive and legislative branches of the federal government. He argued that judicial review of state and local acts was necessary to uphold the Constitution as the supreme law of the land and to maintain national unity. He also argued that the system of checks and balances among the three branches of government could not work properly without the practice of judicial review. Hamilton's views on judicial review are presented in *The Federalist* 78, 80, and 81.

NUMBER 78: HAMILTON

WE PROCEED now to an examination of the judiciary department of the proposed government. . . .

. . . The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through . . . courts of justice, whose duty it must be to declare all acts contrary to . . . the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing. . . .

. . . No legislative act, therefore, contrary to the Constitution, can be valid. To deny this would be to affirm that . . . men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid. . . .

. . . The interpretation of the laws is the proper and peculiar province of the courts. A constitution is . . . a fundamental law. It therefore belongs to them [judges] to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. [In cases of conflict] . . . the constitution ought to be preferred to the statute. . . . Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws rather than by those which are not fundamental. . . .

If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.

The independence of the judges is equally requisite to guard the Constitution and the rights of individuals from [tyranny contrived by an individual or imposed by the majority of the people] . . . against the minor party in the community. [A] fundamental principle of republican government . . . admits the right of the people to alter or abolish the established Constitution whenever they find it inconsistent with their happiness; yet [this does not mean] . . . that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constitutents incompatible with the provision in the existing Constitution would, on that account, be justifiable in a violation of those provisions. . . . Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves. . . .

But it is not with a view to infractions of the Constitution only that the independence of the judges may be an essential safeguard against the effects of occasional ill humors in the society. . . . Here also the firmness of the judicial magistracy . . . operates as a check upon the legislative body. . . .

. . . The inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice can certainly not be expected from judges who hold their office by a temporary commission. . . .

. . . Upon the whole, there can be no room to doubt that the convention acted wisely in copying from the models of those constitutions which have established good behavior as the tenure of their judicial offices. . . . Publius

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NUMBER 80: HAMILTON

. . . It seems scarcely to admit of controversy that the judiciary authority of the Union ought to extend to . . . all those [cases] which arise out of the laws of the United States, passed in pursuance of their just and constitutional powers of legislation. . . . [This point] depends upon this obvious consideration, that there ought always to be a constitutional method of giving efficacy to constitutional provisions. What, for instance, would avail restrictions on the authority of State legislatures, without some constitutional mode of enforcing the observance of them? The States, by the plan of the convention, are prohibited from doing a variety of things, some of which are incompatible with the interests of the Union and others with the principles of good government. The imposition of duties [taxes] on imported articles and the emission of paper money are specimens of each kind. No man of sense will believe that such prohibitions would be scrupulously regarded without some effectual power in the government to restrain or correct the infractions of them. This power must either be a direct negative on the state laws, or an authority in the federal courts to overrule such as might be in manifest contravention of the articles of Union [the Constitution]. . . . Publius

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NUMBER 81: HAMILTON

. . . That there ought to be one court of supreme and final jurisdiction . . . has not been, and is not likely to be contested. . . . The only question that seems to have been raised concerning it is whether it ought to be a distinct body or a branch of the legislature. . . .

The arguments . . . upon which this charge is founded are to this effect: "The authority of the proposed Supreme Court of the United States, which is to be a separate and independent body, will be superior to that of the legislature. The power of construing the laws according to the spirit of the Constitution will enable that court to mould them into whatever shape it may think proper; especially as its decisions will not be in any manner subject to the revision or correction of the legislative body. This is as unprecedented as it is dangerous. . . ." This, upon examination, will be found to be made up altogether of false reasoning upon misconceived fact.

In the first place, there is not a syllable in the plan under consideration [Constitution] which directly empowers the national courts to construe the laws according to the spirit of the Constitution, or which gives them any greater latitude in this respect than may be claimed by the courts of every State. I admit, however, that the Constitution ought to be the standard of construction for the laws, and that wherever there is an evident opposition, the laws ought to give place to the Constitution. But this doctrine is not deducible from any circumstance peculiar to the plan of convention, but form the general theory of a limited Constitution. . . .

It may . . . be observed that the supposed danger of judiciary encroachments on the legislative authority . . . is in reality a phantom. Particular misconstructions and contraventions of the will of the legislature may now and then happen; but they can never be so extensive, as to . . . affect the order of the political system. This may be inferred . . . from the general nature of the judicial power . . . from its comparative weakness, and from its total incapacity to support its usurpations by force. And the inference is greatly fortified by the . . . important constitutional check which the power of instituting impeachments in one part of the legislative body [House of Representatives], and of determining upon them in the other [Senate] would give to that body

[Congress] upon the members of the judicial department. This is alone a great security [against usurping power]. . . . Publius

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What Is Said About Judicial Review in The Federalist Papers—Numbers 78, 80, 81?

Read each of the following statements (1-5) and decide whether or not each statement is a correct (accurate) description or interpretation of ideas about judicial review as presented in *The Federalist* 78, 80, 81. If so, answer YES. If not, answer NO. Identify the specific essay or essays by number, which have evidence to support your answer to each item. Be prepared to indicate paragraphs or sentences that support each answer. If the statement cannot be judged correct or incorrect, based on the content of *The Federalist*, numbers 78, 80, 81, then answer UNCERTAIN.

1. A legislature should be the sole determiner of whether or not its actions are constitutional
YES___ NO___ UNCERTAIN___ ESSAY #___

2. The Constitution implies that the Supreme Court of the United States has power to judge the constitutionality of actions of the President.
YES___ NO___ UNCERTAIN___ ESSAY #___

3. The judicial branch should be separate from and independent of the legislative and executive branches of government in order to check and limit the power of these two branches.
YES___ NO___ UNCERTAIN___ ESSAY #___

4. State governments should have the power to determine whether federal laws are constitutional.
YES___ NO___ UNCERTAIN___ ESSAY #___

5. Congress can check and limit the power of federal judges through the power to impeach and remove them from office for violation of their responsibilities and obligations under the Constitution.
YES___ NO___ UNCERTAIN___ ESSAY #___

Examining Ideas About Judicial Review

Refer to the preceding excerpts from *The Federalist* 78, 80, and 81 to find ideas and information on which to base answers to the following questions. Be prepared to justify or give reasons for answers with references to specific parts of these *Federalist* papers.

1. a. What is judicial review? b. How is judicial review practiced with reference to state governments? c. How is judicial review practiced with reference to the legislative and executive branches of the federal government?

2. How does judicial review contribute to the practice of limited government and the rule of law?

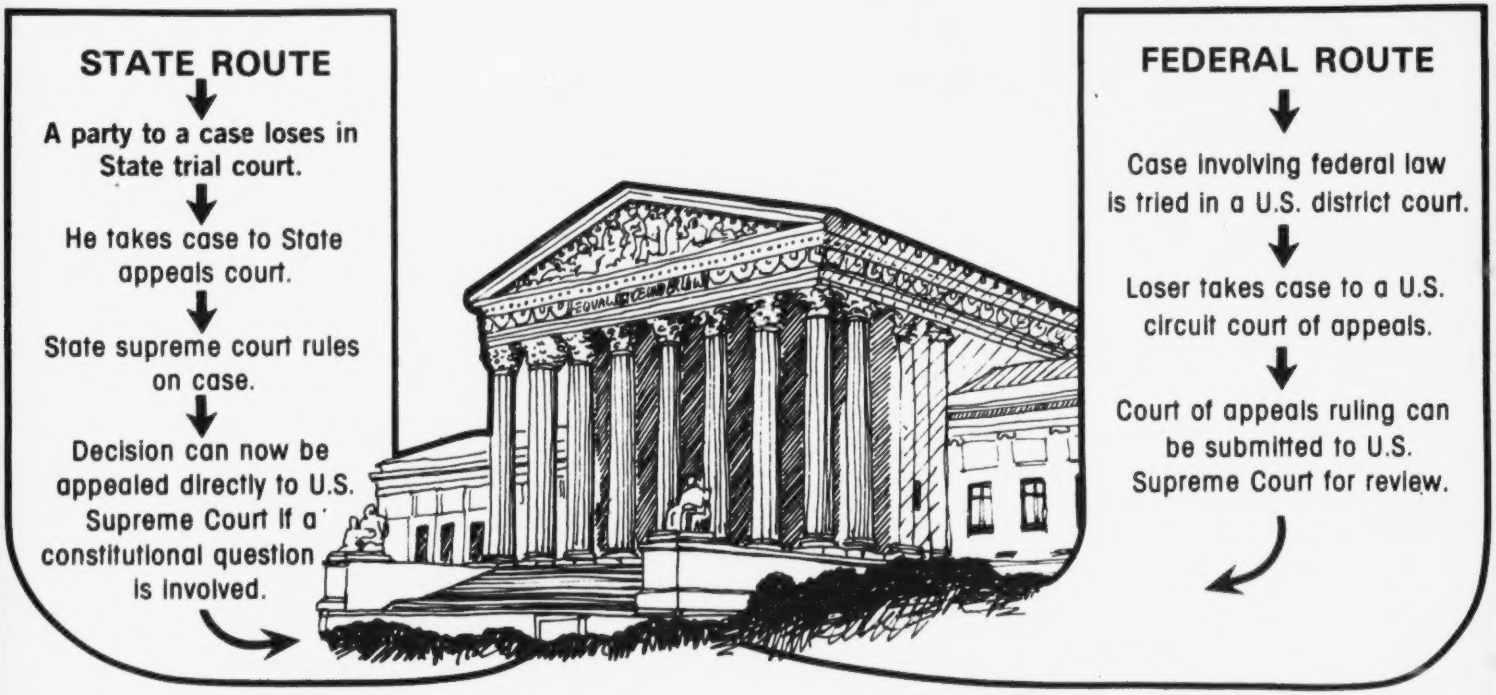
3. How is judicial review a part of separation of powers and checks and balances in the federal government?

4. How is judicial review a part of federalism as practiced in the USA?

5. a. Refer to Article III of the Constitution. Identify at least five duties or powers of the Supreme Court. b. Refer to Article VI, Clauses 2 and 3 of the Constitution. How does this part of the Constitution support judicial review of actions of state governments?

6. Thomas Jefferson said: "My construction of the Constitution is . . . that each department is truly independent of the others, and has an equal right to decide for itself what is the meaning of the Constitution in the cases submitted to its action most especially where it is to act ultimately and without appeal. . . . Each of the three departments has equally the right to decide for itself what is its duty under the Constitution, without any regard to what the others may have decided for themselves under a similar question." a. To what extent does this statement agree with the ideas of Hamilton in *The Federalist*? b. What is your view of Jefferson's statement? To what extent do you agree or disagree with it? Why?

7. a. According to Alexander Hamilton, why are judicial review and an independent judicial branch essential to the practice of constitutional government (limited government and the rule of law) and protection of the rights and liberties of individuals? b. Does the federal judiciary, as conceived by Hamilton, pose any threats to individual rights and liberties and a free society? c. To what extent do you agree with Hamilton's ideas about the powers and duties of the federal judiciary in American constitutional government?



STATE ROUTE

↓

A party to a case loses in State trial court.

↓

He takes case to State appeals court.

↓

State supreme court rules on case.

↓

Decision can now be appealed directly to U.S. Supreme Court if a constitutional question is involved.

FEDERAL ROUTE

↓

Case involving federal law is tried in a U.S. district court.

↓

Loser takes case to a U.S. circuit court of appeals.

↓

Court of appeals ruling can be submitted to U.S. Supreme Court for review.

Two Main Roads to the Supreme Court

TEACHING PLAN FOR LESSON 7: NATIONAL SECURITY WITH LIBERTY IN THE FEDERALIST, NUMBERS 4, 23, 41

Preview of Main Points

The purpose of this lesson is to increase students' knowledge of the treatment of national security with liberty in *The Federalist* 4, 23, and 41. Students are challenged to think about the meaning and value of national security and constitutional limitations on the power of military forces in order to protect liberties of the people.

Curriculum Connection

This lesson can be used with chapters on the introduction of government in civics and government textbooks and with the standard American history textbook chapter on the period of the writing and ratifying of the Constitution. It also fits typical civics and government textbook treatments of issues about civil liberties.

Objectives

Students are expected to:

(1) Identify and comprehend ideas on national security with liberty.
(2) Examine, explain, and appraise ideas on national security with liberty.
(3) Appraise statements about main ideas on national security with liberty in *The Federalist* 4, 23, and 41.
(4) State and justify a position on the relationships of national security with liberty and issues of freedom raised by tensions between security and liberty.

Suggestions for Teaching the Lesson

Opening the Lesson. Place the following diagram on the chalkboard.

Security ____ / ____ Liberty
(Point 1) (Point 2)

Tell students that this diagram represents a continuum between the extremes of national security and liberty. Both national security and liberty are important ends of a free government. Indicate that the mark at the midpoint of the continuum represents a balance between Points 1 and 2 on the diagram. Tell students that Federalists and Antifederalists did not argue for extreme emphasis on either national security or liberty. Rather, both sides debated about where to draw the line between the extreme positions represented by Point 1 and Point 2.

A free society needs both national security and liberty, but these goals are often in conflict. Ask why? During this discussion, point out that too much emphasis on liberty, for example, could threaten national security.and conversely, too much emphasis on national security could destroy liberty and rights of individuals. Ask students to think of examples of negative consequences associated with too much emphasis on either side of the midpoint in the diagram. Indicate that too much emphasis on national security could lead to tyranny by the government over the people with a consequent loss of individual rights and freedoms. Too much emphasis on liberty could lead to disorder and fragmentation of society (anarchy), with the consequent loss of security and safety for property and liberty of individuals. End this discussion by telling students that a free society is always challenged by the need to find a workable balance between the extremes of unlimited liberty of the people and unlimited power by government to provide national security.

Have students read the introduction to the lesson to review ideas about national security with liberty and the relationships between these values in a free society. This introduction sets a context for reading about national security with liberty in excerpts from *The Federalist* 4, 23, and 41.

Developing the Lesson. Have students read the excerpt from essay 4 and respond to the questions at the end of the document. Repeat this procedure with respect to essays 23 and 41. Emphasize general agreement among Jay, Hamilton, and Madison about purposes of a national government with regard to national security. However, the questions at the end of the essays are also designed to draw students' attention to differences between the authors about where to draw the line between extreme emphasis on national security and liberty. Ask: which author's argument would be closer to the national security side of the diagram used in the opening of the lesson? Ask: which author seems to be most concerned with limiting power to provide national security in order to protect the rights and liberties of individuals?

Check students' comprehension of main ideas in all three essays by requiring them to complete the exercise at the end of the lesson, "What Is Said About National Security With Liberty in The Federalist Papers—Numbers 4, 23, 41?" Following are numbers of statements on this list that agree with *The Federalist*: 1, 2, 4, 5, 6, 7, 10, 12, 13, 14. Require students to provide justifications for their answers with references to essays 4, 23, 41.

You might wish to select three or four provocative statements from this exercise as foils for discussion about civic values. For example, you might ask students to agree or disagree with statements 4, 7, and 13.

Have students turn to the five exercises on the last page of the lesson. Ask them to complete items 1-4 in preparation for classroom discussion.

Concluding the Lesson. Conduct a classroom discussion on items 1-4 in the set of exercises at the end of the lesson. Require students to support or justify answers by referring to pertinent parts of *The Federalist*. In general, ask students to give reasons for their answers and encourage students to question and challenge one another to ask for justification or support for answers.

Assign item 5 as the final activity of this lesson. Ask students to write a brief essay (no more than 500 words) in response to this item. Tell students to use at least the following sources of information and ideas: *The Federalist*, the Constitution, and their textbooks on American government, civics, and history.

Use the essays of one or two students to initiate discussion of item 5. In this discussion, highlight the inevitable tension between the concerns for security and liberty in a free society. Identify and discuss issues raised by these tensions. Point out that the tensions and issues associated with civic values are distinguishing characteristics of a free society.

LESSON 7: NATIONAL SECURITY WITH LIBERTY IN THE FEDERALIST, NUMBERS 4, 23, 41

The preamble to the Constitution of the United States says: "We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." Framers of the Constitution established national defense, security, justice, liberty, and general welfare of the people as purposes of the federal government.

The framers of the Constitution of 1787 agreed that a national government has the fundamental responsibility of defending the nation and maintaining security. National security involves the ability of a nation to protect its borders and territory against invasion or control by foreign powers. In 1787, for example, the framers of the Constitution were concerned about the need to defend their new nation from conquest or domination by powerful European nations, such as Britain, France, and Spain, which held territory in the Western Hemisphere.

National security also involves a nation's ability to maintain law, order, and stability ("insure domestic tranquility"). Harold Brown, Secretary of Defense under President Carter, defines national security as "the ability to preserve the nation's physical integrity and territory; to maintain its economic relations with the rest of the world on reasonable terms; to protect its nature, institutions, and governance from disruption from outside; and to control its borders."

The authors of *The Federalist* argued that the Constitution of 1787 would be a bulwark of national defense and security by providing for an energetic and effective federal government, which would have enough power to maintain order internally and protect the nation against external threats. They also argued that the Constitution would limit the powers of government sufficiently to protect individual rights and liberties against officials who might otherwise try to undermine them. The authors of *The Federalist* pointed to constitutional limits on powers of the legislative and executive branches of government, which were designed to secure civil liberties and rights and prevent tyranny. In particular, they stressed the civilian control of military forces provided by the Constitution. For example, the President, a civilian, is the commander in chief of the armed forces, and the Congress decides how much money should be provided to support the nation's army. Nonetheless, critics of the Constitution feared basic freedoms might be lost or unduly limited by leaders more concerned with national defense and security than with civil liberties and rights. The critics preferred the more limited government of the Articles of Confederation to the more powerful government of the Constitution of 1787.

Hamilton, Madison, and Jay discussed national defense and security with liberty in *The Federalist* 4, 23, and 41. They argued that the Constitution of 1787 provided government strong enough for national defense and security and limited enough for a free society.

NUMBER 4: JAY

. . . the safety of the people of America against dangers from foreign force depends not only on their forbearing to give just causes of war to other nations, but also on their placing and continuing themselves in such a situation as not to invite hostility or insult. . . .

. . . Wisely, therefore, do they consider union and a good national government as necessary to put and keep them in such a situation as, instead of inviting war, will tend to repress and discourage it. That situation consists in the best possible state of defense, and necessarily depends on the government, the arms, and the resources of the country.

But whatever may be our situation, whether firmly united under one national government, or split into a number of confederacies, certain it is that foreign nations will know and view it exactly as it is; and they will act towards us accordingly. If they see that our national government is efficient and well administered, our trade prudently regulated, our militia properly organized and disciplined, our resources and finances discreetly managed, our credit re-established, our people free, contented, and united, they will be much more disposed to cultivate our friendship than provoke our resentment. If, on the other hand, they find us . . . destitute of an effectual government . . . what a poor, pitiful figure will America make in their eyes! How liable would she become not only to their contempt, but to their outrage, and how soon would dear-bought experience proclaim that when a people or family so divide, it never fails to be against themselves.

Publius

Reviewing Ideas in Essay 4

1. What is Jay's main point about how America can maintain national security against threats from foreign nations? Write a topic sentence that states this main idea.

2. How does Jay support or justify his main point about maintaining national security against foreign powers? Write two statements in support of your topic sentence.

3. What is your opinion of Jay's main point about national security? (Judge his idea with reference to the situation of the United States in 1787. Judge his idea also with reference to the situation of the United States today.) Write one paragraph, in response to this question, that pertains to 1787. Write a second paragraph that pertains to the United States today.

NUMBER 23: HAMILTON

. . . The principal purposes to be answered by union are these—the common defense of the members; the preservation of the public peace, as well against internal convulsions as external attacks; the regulation of commerce with other nations and between the States; the superintendence of our intercourse, political and commercial, with foreign countries.

The authorities essential to the common defense are these: to raise armies; to build and equip fleets; to prescribe rules for the government of both; to direct their operations; to provide for their support. These powers ought to exist without limitation, *because it is impossible to foresee or to define the extent and variety of national exigencies, and the correspondent extent and variety of the means which may be necessary to satisfy them.* The circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed. This power ought to be coextensive with all the possible combinations of such circumstances; and ought to be under the direction of the same councils [executive branch of the national government] which are appointed to preside over the common defense. . . .

. . . there can be no limitation of that authority which is to provide for the defense and protection of the community in any matter essential to its efficacy—that is, in any matter essential to the *formation, direction, or support* of the NATIONAL FORCES. . . .

. . . the Union [United States of America] ought to be invested with full power to levy troops; to build and equip fleets; and to raise the revenues which will be required for the formation and support of an army and navy in the customary and ordinary modes practiced by other governments. . . .

Shall the Union be constituted the guardian of the common safety? Are fleets and armies and revenues necessary to this purpose? The government of the Union must be empowered to pass all laws, and to make all regulations which have relation to them. . . . Publius

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Reviewing Ideas in Essay 23

1. According to Hamilton, what are purposes of a national government with regard to national security?

2. What does Hamilton say about limitations on a national government in carrying out its responsibilities for national security?

3. Do Hamilton's ideas on powers needed by government to provide national security pose any dangers to the rights and liberties of individuals?

4. What dangers to rights and liberties of individuals might result from having a national government too weak to exercise powers needed to provide national security?

NUMBER 41: MADISON

. . . Is the aggregate power of the general government greater than ought to have been vested in it?. . .

. . . in every political institution, a power to advance the public happiness involves a discretion which may be misapplied and abused. They will see, therefore, that in all cases where power is to be conferred, the point first to be decided is whether such a power be necessary to the public good; as the next will be, in case of an affirmative decision, to guard as effectually as possible against a perversion of the power to the public detriment.

That we may form a correct judgment on this subject, it will be proper to review the several powers conferred on the government of the Union; and that this may be the more conveniently done they may be reduced into different classes as they relate to the following different objects: 1. Security against foreign danger; 2. Regulation of the intercourse with foreign nations; 3. Maintenance of harmony and proper intercourse among the States; 4. Certain miscellaneous objects of general utility; 5. Restraint of the States from certain injurious acts; 6. Provisions for giving due efficacy to all these powers.

The powers falling within the first class are those of declaring war . . . of providing armies and fleets; of regulating and calling forth the militia; of levying and borrowing money.

Security against foreign danger is one of the primitive objects of civil society. It is an avowed and essential object of the American Union. The powers requisite for attaining it must be effectually confided to the federal councils [national government]. . . .

. . . With what color of propriety could the force necessary for defense be limited by those who cannot limit the force of offense? If a federal Constitution could chain the ambition or set bounds to the exertions of all other nations, then indeed might it prudently chain the discretion of its own government and set bounds to the exertions for its own safety.

How could a readiness for war in time of peace be safely prohibited, unless we could prohibit in like manner the preparations and establishments of every hostile nation? The means of security can only be regulated by the means and the danger of attack. They will . . . be ever determined by these rules and by no others. It is in vain to oppose constitutional barriers to the impulse of self-preservation. It is worse than in vain; because it plants in the Constitution itself necessary usurpations of power, every precedent of which is a germ of unnecessary and multiplied repetitions. If one nation maintains constantly a disciplined army, ready for the service of ambition or revenge, it obliges the most pacific nations who may be within the reach of its enterprises to take corresponding precautions. . . .

A standing force . . . is a dangerous, at the same time that it may be a necessary, provision. On an extensive scale its consequences may be fatal. On any scale it is an object of laudable circumspection and precaution. A wise nation will combine all these considerations; and, whilst it does not rashly preclude itself from any resource which may become essential to its safety, will exert all its prudence in diminishing both the necessity and the danger of resorting to one which may be inauspicious to its liberties.

The clearest marks of this prudence are stamped on the proposed Constitution. The Union itself, which it cements and secures, destroys every pretext for a military establishment which could be dangerous. America united, with a handful of troops . . . exhibits a more forbidding posture to foreign ambition than America disunited, with a hundred thousand veterans ready for combat. . . .

Next to the effectual establishment of the Union, the best possible precaution against danger from standing armies is a limitation of the term for which revenue may be appropriated to their support. This precaution the Constitution has prudently added [the provision in Article I that Congress has power, during a two year period, to provide or withhold funds for the army].

. . . the Constitution has provided the most effectual guards against danger from [a standing army or permanent military establishment that might destroy a free government and a free society].

. . . nothing short of a Constitution fully adequate to the national defense and the preservation of the Union can save America from as many standing armies as it may be split into States or Confederacies, and from such a progressive augmentation of these establishments in each as will render them as burdensome to the properties and ominous to the liberties of the people as any establishment that can become necessary under a united and efficient government must be tolerable to the former and safe to the latter [the liberties of the people]. . . .

Publius

Reviewing Ideas in Essay 41

1. According to Madison, what are the responsibilities of a national government in providing national security?

2. Why is national security an inescapable duty of a national government?

3. What does Madison say about limiting the power of government in regard to national security?

4. What are Madison's ideas about dangers to the rights and liberties of individuals from the exercise of power by government to provide national security?

5. According to Madison, how would government under the Constitution of 1787 provide both national security and protection of the rights and liberties of individuals?

What Is Said About National Security With Liberty in The Federalist Papers—Numbers 4, 23, 41?

Which of the following statements agree with ideas presented in *The Federalist* 4, 23, and 41? Place a checkmark in the space next to each statement that agrees with ideas in essays 4, 23, and 41 on national security with liberty. Be prepared to support and explain your choices by referring to specific parts of essays 4, 23, and 41.

____ 1. National unity and strength are deterrents to attack by a foreign nation.

____ 2. A fundamental purpose of any national government is providing security for the nation against threats from foreign powers.

____ 3. Tyranny is acceptable if it is imposed in order to defend the nation and provide national security.

____ 4. A military establishment is both necessary and dangerous to the protection of civil liberties and rights.

____ 5. There should be constitutional limits upon power exercised by military leaders.

____ 6. The Constitution provides for civilian control of military forces as a means to control abuses of power by military leaders.

____ 7. A nation without an effective military establishment is in danger of losing its security and freedom.

____ 8. A nation without a standing army will have more freedom than a nation with a strong military establishment.

____ 9. The more limited a national government is, the freer the people will be who live under the government.

____ 10. A national government should have sufficient authority to maintain armed forces and regulate them on behalf of the people in order to achieve goals or interests of the community.

___ 11. National defense and security are more important than liberty as fundamental purposes of a national government.

___ 12. The "power of the purse" is an effective means for controlling the power of the military on behalf of the people, which is granted to Congress in the Constitution.

___ 13. Constitutional government in a free society is designed to balance power needed for national defense and security with limits on power needed to protect liberties and rights of the people.

___ 14. A fundamental purpose of national government in a free society is to seek both security and liberty for the people it serves.

Examining Ideas About National Security With Liberty

Refer to the preceding excerpts from *The Federalist* 4, 23, and 41 to find ideas and information on which to base answers to the following questions. Be prepared to give reasons for answers with references to parts of these essays.

1. What are characteristics of a national government and society that contribute to national security?

2. Madison says in *The Federalist* 41: "A standing force . . . is a dangerous, at the same time it may be a necessary, provision. On an extensive scale its consequences may be fatal. On any scale it is an object of laudable circumspection and precaution. A wise nation will combine all these considerations; and, whilst it does not rashly preclude itself from any resource which may become essential to its safety, will exert all its prudence in diminishing both the necessity and the danger of resorting to one which may be inauspicious to its liberties." a. What is the main idea of this quotation? b. What is the relationship of Madison's main idea in this quotation and the main purposes of government stated in the Preamble to the Constitution? c. To what extent do you agree with this statement of Madison?

3. Refer to Article I, Sections 7, 8, 9; Article II, Sections 1 and 2; and Amendments II and III of the Constitution. a. Identify powers and duties of the national government to provide national defense and security. b. Identify limitations on military power that are designed to maintain civilian control of the military and to protect civil liberties and rights against abuses of power by military leaders.

4. Compare and contrast the ideas of Hamilton and Madison on national security as expressed in *The Federalist* 23 and 41. a. To what extent do they agree or disagree? b. To what extent do Hamilton and Madison have different ideas about the relationship of national security to liberty? c. To what extent do you agree with the positions on national security of Hamilton, Madison, or both of them?

5. a. How are national defense and security related to civil liberty as values of government and citizenship in a free society? b. How might strong emphasis on national defense and security threaten civil liberties? c. How might lack of concern for national defense and security threaten civil liberties? d. What are characteristics of a constitutional government that is designed to achieve security with liberty?

TEACHING PLAN FOR LESSON 8:
POPULAR SOVEREIGNTY AND FREE GOVERNMENT IN THE FEDERALIST, NUMBERS 10, 39, 51

Preview of Main Points

The purpose of this lesson is to increase students' knowledge of the treatment of popular sovereignty and free government in *The Federalist* 10, 39, and 51. Students are also challenged to think about the meaning and value of majority rule and minority rights in order to secure a free and just society. Majority rule and minority rights are presented as basic and conflicting values in the American heritage, which raise continuing issues for citizens of a free society.

Curriculum Connection

This lesson can be used with chapters on the introduction of government in civics and government textbooks and with the standard American history textbook chapter on the period of the writing and ratifying of the Constitution. It also fits typical civics and government textbook treatments of civil liberties and rights.

Objectives

Students are expected to:

(1) Identify and comprehend ideas on popular sovereignty, free government, majority rule, minority rights, republicanism, and pure democracy.

(2) Examine, explain, and appraise ideas on popular sovereignty, free government, majority rule, minority rights, republicanism, and pure democracy.

(3) Appraise statements about popular sovereignty, free government, majority rule, and minority rights in *The Federalist* 10, 39, and 51.

(4) Examine and appraise positions on the value of majority rule with minority rights and the necessity of limiting majority rule and minority rights to achieve a free government.

(5) State and justify a position on the significance and practice of majority rule with protection of minority rights in contemporary American society and in American history.

Suggestions for Teaching the Lesson

Opening the Lesson. Have students read the introduction to the lesson to examine the core concepts of popular sovereignty and free government. Emphasize that Madison and other supporters of the Constitution argued for limited popular government and wanted to restrict the power of majorities in order to protect the rights and liberties of individuals. This introduction sets a context for study of excerpts from essays 39, 10, and 51 of *The Federalist.*

Developing the Lesson. Have students read the excerpt from essay 39. Check students' comprehension of main ideas by requiring them to answer the questions following the excerpt from essay 39. Repeat this procedure with reference to excerpts from essays 10 and 51.

Have students turn to the exercises at the end of the lesson. Assign the exercise, "What Is Said About Popular Sovereignty and Free Government. . . ?" Following are numbers of statements on this list that agree with *The Federalist*: 2, 3, 4, 5, 11, 14, 15. You might wish to select two or three provocative statements from this exercise as foils for discussion about civic values. For example, you might ask students to agree or disagree with Madison's position on statements 6 and 7.

Have students turn to the exercises at the very end of the lesson. Ask them to complete items 1-4 in preparation for classroom discussion.

Concluding the Lesson. Conduct a classroom discussion on items 1-4 in the set of exercises at the end of the lesson. Require students to support or justify answers by referring to pertinent parts of *The Federalist.* In general, ask students to give reasons for their answers and encourage students to question and challenge one another to ask for justification or support for answers.

Assign item 5 as the final activity of this lesson. Ask students to write a brief essay (no more than 500 words) in response to this item. Use the essays of one or two students to initiate discussion of item 5. Advise students to use at least three sources in writing their essays: *The Federalist*, the Constitution, and their history, government, and civics textbooks.

Civic values that should be highlighted in this lesson, in addition to majority rule and minority rights, are social diversity, social unity, common good, liberty, limited government, and the rule of law. Emphasize potential conflicts between values such as majority rule and minority rights and social diversity and unity and the basic issues of a free society that are raised by these value conflicts. In addition, emphasize that in a free government, balances are sought and maintained between such values as majority rule and minority rights. Citizens must think in terms of "more or less" and not in terms of "either-or" to achieve and sustain workable balances between core values that may lead to conflicts and issues.

As an extra assignment, you might ask students to read essay 9 of *The Federalist* by Alexander Hamilton. Ask them to compare and contrast Hamilton's ideas on free government with Madison's ideas expressed in essay 10.

NOTE: The concept of free government is a fundmental idea in *The Federalist*. This concept is discussed in detail in an excellent book by Gottfried Dietze, *The Federalist: A Classic on Federalism and Free Government*. Here is Dietze's definition of free government.

"Free government could thus be defined as a popular government where the majority is, for the sake of individual and minority rights, bound by a constitution and where popular participation in government, while generally accepted, is only a means for the protection of the individual's life, liberty, and property."

LESSON 8:
POPULAR SOVEREIGNTY AND FREE GOVERNMENT IN THE FEDERALIST, NUMBERS 10, 39, 51

Constitutional government in the United States is based on *popular sovereignty*; that is, government is established by free choice of the people and is expected to serve the people, who have sovereignty, or supreme power. The American Constitution, for example, establishes government in the name of the people. The Preamble says: "We the people of the United States . . . do ordain and establish this Constitution for the United States of America."

Popular sovereignty was exercised through Article VII of the Constitution, which required that nine states approve the proposed frame of government before it could become the supreme law of the United States. The people chose representatives to ratification conventions, who freely decided to approve the Constitution, in the name of those who elected them. Popular sovereignty was also recognized in Article V of the Constitution, which provides for amendments to the Constitution through decisions by elected representatives of the people. Finally, popular sovereignty is reflected in Article I, which requires that Representatives to Congress be elected by the people.

Popular sovereignty, or government by the people, implies majority rule. In a popular government, people elect representatives in government by majority vote, and these representatives of the people make laws by majority vote. However, popular government can pose dangers to the rights and freedoms of individuals. Majorities might oppress minorities or individuals who disagree with them. Thus, James Madison and other supporters of the Constitution of 1787 believed that popular sovereignty and majority rule should be limited to protect the rights and liberties of individuals.

The writers and defenders of the Constitution of 1787 feared three kinds of tyranny. First, they feared the tyranny of a monarch or dictator (tyranny of unlimited rule by one individual over the majority). Second, they feared the tyranny of an aristocracy or oligarchy (tyranny of unlimited rule by a few over the majority of the people). Third, they feared greatly the tyranny of the majority of the people over minority groups or individuals (tyranny of unlimited majority rule). John Adams' name for unlimited rule of the majority was "democratic despotism." Alexander Hamilton warned us about unfettered power in government, whether exercised by an individual, minority groups, or the majority of the people. Hamilton wrote: "Men love power. Give all power to the many, they will oppress the few. Give all power to the few, they will oppress the many."

According to Madison, the Constitution of 1787 limited the power of majorities by establishing a *free government*; that is, popular government where the majority is limited by law in order to protect the rights and liberties of individuals and minorities. In a free government, there should be a workable balance between majority rule and minority rights. There should be limits on the power of majorities to protect the rights of minorities and individuals, who may disagree with, or in some significant way be different from, the majority of the people. Likewise, there should be limits on the power of minorities, so that the spirit and practice of majority rule is not violated. At what point, and under what circumstances, does rule by the majority violate the legitimate rights of minority groups or individuals? Likewise, when and how do the rights of minorities and individuals violate or undermine the will of the majority?

It is difficult to achieve and maintain a workable balance between the conflicting claims of majority rule and minority rights. Important issues of a free society pertain to these claims. Citizens of a free government must continually make decisions about the limits of majority rule and the limits of minority rights and the balance between these two ideas.

Madison discussed majorities, minorities, popular sovereignty, and free government in essays number 10, 39, 51 of *The Federalist*.

Read the following excerpt from *The Federalist* 39 by James Madison. Answer the questions below the excerpt and be prepared to defend your responses in class.

NUMBER 39: MADISON

If we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure for a limited period, or during good behavior. It is *essential* to such a government that it be derived from the great body of society, not from an inconsiderable proportion or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans and claim for their government the honorable title of republic. It is *sufficient* for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other popular government that has been or can be well organized or well executed, would be degraded from the republican character. . . .

. . . The House of Representatives, like that of one branch at least of all the State legislatures, is elected immediately by the great body of the people. The Senate, like the present Congress and the Senate of Maryland, derives its appointment indirectly from the people. The President is indirectly derived from the choice of the people, according to the example in most of the states. Even the judges, with all other officers of the Union, will, as in the several states, be the choice, though a remote choice, of the people themselves. The duration of the appointments is equally conformable to the republican standard and to the model of State constitutions. The House of Representatives is periodically elective, as in all the States; and for the period of two years, as in the State of South Carolina. The Senate is elective for the period of six years, which is but one year more than the period of the Senate of Maryland, and but two more than that of the Senates of New York and Virginia. The President is to continue in office for the period of four years; as in New York and Delaware the chief magistrate is elected for three years, and in South Carolina for two years. In the other States the election is annual. In several of the States, however, no explicit provision is made for the impeachment of the chief magistrate. And in Delaware and Virginia he is not impeachable till out of office. The President of the United States is impeachable at any time during his continuance in office. . . . Publius

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Reviewing Ideas in Essay 39

1. What is Madison's definition of a republic?
2. Is popular sovereignty included in Madison's definition of a republican form of government? Explain.
3. Identify at least three examples of popular sovereignty in essay 39.

Read the following excerpts from essay 10 of *The Federalist* and answer the questions at the end of the essay.

NUMBER 10: MADISON

Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. . . .

By a faction I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community. . . .

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government . . . enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. . . .

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. . . .

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole . . . and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would at the same time be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens and greater sphere of country over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests of the people. The question resulting is, whether small or extensive republics are most favorable to the election of proper guardians of the public weal. . . .

. . . in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representative too little acquainted with all their local circumstance and lesser interests; as by reducing it too much you render him unduly attached to these, and too little fit to comprehend and pursue great national objects. The federal Constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the State legislatures.

The other point of difference is the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government. . . . Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other. . . . Publius

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Reviewing Ideas in Essay 10

1. What are the differences between a republic and a democracy?
2. What are dangers of a pure or unlimited democracy?
3. How does a republic overcome weaknesses associated with pure democracy?
4. Why does the republican form of government fit the Federalists' definition of free government?

Read the excerpt from essay 51 by Madison and answer the questions on majorities, minorities, and free government, which follow the excerpt.

NUMBER 51: MADISON

. . . It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority—that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority [monarchy or dictatorship]. This at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests and classes of citizens, that the rights of individuals, or the minority, will be in little danger from interested combinations of the majority. In a free government the security for civil rights . . . consists . . . in the multiplicity of interests. . . . Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. . . . In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good; whilst there being thus less danger to a minor from the will of a major party, there must be less pretext also, to provide for the security of the former, by introducing into the government a will not dependent on the latter, or, in other words, a will independent of the society itself. . . . Publius

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Reviewing Ideas in Essay 51

1. Madison says (*The Federalist* 51): "It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part." a. What does this statement have to do with civic values such as free government, individual liberty, majority rule, and minority rights? b. To what extent do you agree with Madison's statement? Why?

2. Madison says (*The Federalist* 51): "If a majority be united by a common interest, the rights of the minority will be insecure." a. Why does Madison say that majority rule could destroy the rights of minorities? b. Does Madison believe that minorities could threaten majority rule? c. What are Madison's ideas about how to guard against the destruction of minority rights by the majority and the destruction of majority rule by minorities? d. Does Madison value both majority rule and minority rights? Explain.

What Is Said About Popular Sovereignty and Free Government in The Federalist—10, 39, 51?

Which of the following statements agree with ideas presented in *The Federalist* 10, 39, and 51? *Place a checkmark in the space next to each statement that agrees with The Federalist position on popular sovereignty and free government.* Be prepared to support and explain your choices by referring to specific parts of essays 10, 39, and 51.

____ 1. Pure democracy provides sufficient protection against tyranny.

____ 2. Uncontrolled factions can lead to tyranny of the majority.

____ 3. A free government is based on popular sovereignty.

____ 4. Tyranny of the majority is a constant threat in a society based on popular sovereignty.

____ 5. In comparison to alternative forms of government, a large federal republic is more likely to provide protection of the liberties and rights of individuals.

____ 6. In a free government, there should be complete equality among social groups in wealth, social status, and legal matters.

____ 7. In a free government, the rights and liberties of groups should have priority over the rights and liberties of individuals.

____ 8. The best protection against tyranny of the majority is the good will of the rulers toward the rights and liberties of minority groups.

____ 9. Factions and social diversity have no place in a free government.

____ 10. Pure democracy is the same as a federal republic.

____ 11. Factions have the potential to disrupt society and lead to loss of freedom.

____ 12. In a free government, there is unlimited rule by the majority.

____ 13. In a free government, minorities have unlimited freedoms and rights.

____ 14. Social diversity or pluralism, in an extended federal republic, contributes importantly to protection of personal rights and liberties.

____ 15. A free government protects individuals and minority groups against oppression by the majority of the people.

Examining Ideas About Majority Rule With Minority Rights

Refer to the preceding excerpts from *The Federalist* 10 and 51 to find ideas and information on which to base answers to the following questions. Be prepared to justify or give reasons for answers with references to specific parts of these *Federalist* papers.

1. According to Madison, what is a faction?

2. What are positive and negative characteristics of factions?

3. a. Why does an extended federal republic provide the best means for controlling the negative effects of factions? b. Why is a pure democracy an inadequate means of controlling the negative effects of factions?

4. John Adams wrote, in his *Defense of the Constitutions of Government of the United States of America* (1786): "If it is meant by the people . . . a representative assembly . . . they are not the best keepers of the people's liberties or their own, if you give them all the power, legislative, executive, and judicial. They would invade the liberties of the people, at least the majority of them would invade the liberties of the minority, sooner and oftener than any absolute monarch." a. To what extent does James Madison (in *The Federalist* 10 and 51) agree with Adams? Why? b. To what extent do you agree with Adams? Why?

5. a. To what extent are majority rule and minority rights basic principles of government in the USA today? b. To what extent do current practices of majority rule and protection of minority rights seem to fit Madison's ideas? c. To what extent do current practices of American government seem to depart from or contradict Madison's ideas on free government? d. To what extent do you agree with the ideas of Madison on majority rule and minority rights and free government?

TEACHING PLAN FOR LESSON 9: MADISON, HAMILTON, AND THE BILL OF RIGHTS

Preview of Main Points

The birth of the Federal Bill of Rights is the main theme of this lesson. Three occasions for decisions about a Federal Bill of Rights are the focal points. First is a discussion of decisions about a Bill of Rights at the Constitutional Convention, 1787. The next occasion for decisions treated in this lesson is the ratification contest, 1787-1788. Finally, decisions about a Bill of Rights at the first session of Congress are examined. Ideas of Madison and Hamilton are featured. Hamilton's views in essay 84 of *The Federalist* are presented for examination by students.

Curriculum Connection

All high school American history and government textbooks discuss briefly the arguments of Antifederalists for a Bill of Rights during the contest over ratification of the Constitution. The discussion is concluded with a statement about the proposal and ratification of the first ten amendments to the Constitution. This lesson can be used to supplement the very brief textbook discussions about the birth of the Bill of Rights. Through this lesson, students can examine alternative arguments for and against a Federal Bill of Rights from the Constitutional Convention to the ratification of Amendments I-X.

Objectives

Students are expected to:

(1) Examine arguments for and against a Federal Bill of Rights at three points: (a) the Constitutional Convention, 1787, (b) the ratification contest, 1787-1788, and (c) the first session of Congress, 1789.
(2) Analyze and judge James Madison's decisions about a Federal Bill of Rights during the Constitutional Convention, the ratification contest, and the first session of Congress.
(3) Analyze and judge Alexander Hamilton's ideas about a Federal Bill of Rights.
(4) Compare and contrast ideas of Madison and Hamilton about a Federal Bill of Rights.

Suggestions for Teaching the Lesson

Opening the Lesson. Ask students what the Federal Bill of Rights is. Point to a copy of the Bill of Rights in the Amendments section of the U.S. Constitution. Ask why the Bill of Rights was not a part of the Constitution of 1787. Use this discussion as a "springboard" for the reading assignment of this lesson, which explains how the Bill of Rights was added to the Constitution.

Developing the Lesson. Have students read the first section of this lesson on "The Bill of Rights at the Constitutional Convention." Check students' comprehension of main ideas by asking them to answer the questions at the end of this section. Repeat this procedure with regard to the next two sections of the lesson on "The Bill of Rights in the Campaign for Ratification" and "Hamilton's Position on a Federal Bill of Rights."

Finally, have students read the last section of the lesson, "Madison's Final Position on a Federal Bill of Rights." Next require students to answer items 1-5, at the end of the lesson, in preparation for a classroom discussion.

Concluding the Lesson. Conduct a class discussion of items 1-5 in the set of exercises at the end of the lesson. Finish the lesson by requiring students to write a brief essay (no more than 500 words) in response to item 6. An alternative procedure is to stage a classroom debate on the main ideas of Hamilton's essay 84.

LESSON 9:
MADISON, HAMILTON, AND THE BILL OF RIGHTS

A *Bill of Rights* limits the power of a government to act against individuals. It lists liberties and rights of individuals, such as freedom of speech and property rights, which no government official can legally take away. In 1787 and 1788, Federalists and Antifederalists argued about whether to add a separate Bill of Rights to the Constitution.

The Bill of Rights at the Constitutional Convention

The main objective at the Constitutional Convention was to create an effective government of the United States. Thus, the overriding topic was the powers to be granted to or withheld from the national government. However, George Mason of Virginia cautioned the delegates to remember "to attend to the rights of every class of the people." Mason had co-authored the Virginia Declaration of Rights of 1776 with Edmund Pendleton and James Madison. This statement of civil liberties served as a model for the constitution-makers of other states.

The state bills of rights seemed to provide ample legal protection for individual liberties under the weak central government established by the Articles of Confederation. However, the Constitutional Convention aimed to establish a much stronger central government which would be superior to the state governments. This development seemed to require a Bill of Rights to protect individual liberties against the powers of a strong national government.

James Madison agreed with Mason about the importance of civil liberties and rights. However, he saw no need to include in the Constitution a long list of freedoms and rights that were to be protected anyway. Madison argued that the state constitutions provided sufficient protection for individual rights. The new federal government would have only those powers the states and the people allowed it to have. He considered it unnecessary to deny powers to the federal government that the states or the people had not granted to it. For example, it seemed unnecessary to specify that the government could not make laws prohibiting the freedom of speech when it did not have the power to make such laws.

On September 12, near the end of the Constitutional Convention, George Mason forcefully raised the issue of a Bill of Rights. He said that the Constitution should be "prefaced with a Bill of Rights. . . . It would give great quiet to the people; and with the aid of the State declarations [Bill of Rights], a bill might be prepared in a few hours." Elbridge Gerry of Massachusetts suggested appointing a committee to write a Bill of Rights for inclusion in the Constitution; Mason seconded the motion.

The other delegates, including Alexander Hamilton and James Madison, rejected the Gerry-Mason motion. The final draft of the Constitution had no separate Bill of Rights.

The new plan of government, however, did recognize certain basic liberties and rights of the people. First and foremost, it established a system of representative government, framing it in the name of the people. Article III provided the right of trial by jury for all faced with criminal prosecutions. Article I, Section 9 protected the privilege of the "writ of habeas corpus": this writ is a court order requiring police to explain to a judge why they have arrested and detained an individual. An important one, this right prevents authorities from detaining citizens without legal cause.

Article I, Section 9, also prohibited the federal government from passing "bills of attainder" and "ex post facto laws." A bill of attainder declares a person guilty of a crime even though that person has never been tried or given a chance to offer a defense in a court of law.

An "ex post facto" law (Latin for "after the fact") allows the government to punish people for actions ruled criminal after they had been committed. Such laws had often been used in England to punish people for their political or religious beliefs. Article I, Section 10, prohibited state governments from passing "bills of attainder" or "ex post facto" laws.

The civil liberties and civil rights protections included in the Constitution did not satisfy George Mason and Elbridge Gerry. They refused to sign the final draft of the Constitution.

Reviewing Main Ideas

1. What decision about a Bill of Rights was made at the Constitutional Convention?
2. What were the views of Madison about a Bill of Rights in the Constitution?

The Bill of Rights in the Campaign for Ratification

In October 1787, George Mason circulated a statement of his objections to the Constitution. He said:

> There is no declaration of rights; and, the laws of the general government [the government of the United States] being paramount to [superior to] the laws and constitutions of the several states, the

> declarations of rights in the separate states are no security. . . .
>
> The judiciary of the United States . . . [will] absorb and destroy the judiciaries of the several states. . . .
>
> There is no declaration of any kind for preserving the liberty of the press, the trial by jury in civil cases, nor against the danger of standing armies in time of peace.

The issue of a national Bill of Rights divided Federalists and Antifederalists. George Mason became a leader of Antifederalist forces opposing ratification of the Constitution, because it lacked a Bill of Rights. James Madison and Alexander Hamilton were leaders of the Fededralists, who thought a Bill of Rights to be unnecessary.

Spirited debates in state ratifying conventions centered on whether to insist upon the inclusion of a Bill of Rights as a condition for approval of the Constitution. Some of the most vigorous and interesting debates occurred at the Virginia ratifying convention. George Mason, Richard Henry Lee, and Patrick Henry led the Antifederalist forces in Virginia (those who opposed ratification for one reason or another). James Madison was a leader of the Federalists (those who supported ratification).

Henry spoke forcefully for liberty of individuals and the rights of state governments:

> Mr. Chairman, the necessity of a Bill of Rights appears to me to be greater in this government than ever it was in any government before. . . . All rights not expressly and unequivocally reserved to the people are impliedly and incidentally relinquished to rulers, as necessarily inseparable from the delegated powers. . . .
>
> This is the question. If you intend to reserve your unalienable right, you must have the most express stipulation; for, if implication be allowed, you are ousted of those rights. If the people do not think it necessary to reserve them, they will be supposed to be given up. . . .
>
> It was expressly declared in our Confederation that every right was retained by the states, respectively, which was not given up to the government of the United States. But there is no such thing here. You, therefore, by a natural and unavoidable implication, give up your rights to the general government. . . .

Henry and his supporters suggested several amendments to the proposed Constitution. Similar to the Virginia Declaration of Rights of 1776, they intended to protect basic liberties and rights of the people and the rights of the state governments against the possible abuse by a strong federal government.

James Madison replied: "As far as his [Henry's] amendments are not objectionable, or unsafe, so far they may be subsequently recommended—not because they are necessary, but because they can produce no possible danger."

On June 26, 1788, the Virginia Convention ratified the Constitution with the attached recommendation that the states add a Bill of Rights as soon as possible. Madison and other Federalists had pledged to promote the amendments recommended by the Virginia Convention.

Advocates of a Bill of Rights had won pledges from the Federalists to work for the addition of certain civil liberties to the Constitution at several state conventions. In return for this pledge from the Federalists, these delegates agreed to vote for ratification of the Constitution. Agreements of this sort had helped to sway the decision in favor of the Constitution at the ratifying conventions in Massachusetts, New Hampshire, Virginia, and New York.

Reviewing Main Ideas

1. What was the Antifederalist position on a Bill of Rights in the Constitution?
2. How did James Madison respond to the Antifederalist argument for a Bill of Rights? Why?

Hamilton's Position on a Federal Bill of Rights: The Federalist, Number 84 (1788)

The ratification campaign in New York was underway when Alexander Hamilton wrote essay number 84 of *The Federalist*. This essay summarized arguments that Hamilton expressed strongly in debates at the New York Ratification Convention and earlier.

NUMBER 84: HAMILTON

. . . [Critics of the Constitution object to it because they say it] contains no bill of rights. . . .

. . . I answer that the Constitution proposed by the convention contains . . . a number of such provisions.

Independent of those which relate to the structure of the government [separation of powers among three branches of government, a system whereby each branch of government can check the power of the other branches, and division of power between the national government and the state governments] we find the following. . . . [Hamilton lists parts of the Constitution of 1787 that include provisions for protection of rights and liberties of the people, such as Article I, Sections 9 and 10 and Article 3, Sections 2 and 3.]

I . . . affirm that bills of rights, in the sense and to the extent in which they are contended for are not only unnecessary but would even be dangerous. They would contain various exceptions to powers which are not granted; and, on this very account, would afford a . . . pretext to claim more than were granted. For why declare that things shall not be done which there is not power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident that it would furnish, to men disposed to usurp, a plausible pretense for claiming that power. They might urge with a semblance of reason that the . . . provision against restraining the liberty of the press afforded a clear implication that a power to prescribe proper regulations concerning it was intended to be vested in the national government. This may serve as a specimen of the numerous handles which would be given to [those wanting to usurp power on the pretext of guarding peoples' liberties] by the indulgence of an injudicious zeal for bills of rights. . . .

What signifies a declaration that "the liberty of the press shall be inviolably preserved?" What is the liberty of the press? Who can give it any definition which would not leave the utmost latitude for evasion? I hold it to be impracticable; and . . . its security, whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government. And here . . . must we seek for the only solid basis of all our rights. . . .

. . . The truth is . . . that the Constitution is itself . . . A BILL OF RIGHTS. . . . Is it one object of a bill of rights to declare and specify the political privileges of the citizens in the structures and administration of the government? This is done in the most ample and precise manner in the plan of the convention. . . . Is another object of a bill of rights to define certain immunities and modes of proceeding, which are relative to personal and private concerns? This . . . has also been attended to . . . in the same plan. Adverting . . . to the substantial meaning of a bill of rights, it is absurd to allege that it is not to be found in the work of the convention. . . . It may be said that it does not go far enough. . . .

Publius

Reviewing Ideas in Essay 84

1. Why does Hamilton argue against adding a Bill of Rights to the Constitution?

2. Why does Hamilton say that a Bill of Rights would be "not only unnecessary but would even be dangerous"?

3. Why does Hamilton say that "the Constitution is itself . . . A BILL OF RIGHTS"?

Madison's Final Position on a Federal Bill of Rights (1789)

James Madison was elected to represent his district in Virginia at the first session of Congress in 1789. Madison proposed several amendments to the Constitution, which would become a Bill of Rights. Madison said:

> There have been objections of various kinds . . . against the Constitution, but I believe the great mass of the people who opposed it, disliked it because it did not contain effectual [guarantees against] enroachments on particular rights, and those safeguards which they have been long accustomed to have interposed between them and the magistrate who exercises the sovereign power; nor ought we to consider them safe, while a great number of our fellow citizens think these securities necessary.

A majority in Congress seemed ready to support most of Madison's proposals, calling for only minor changes. One item, however, concerned the supporters of states' rights within the Federal Union.

Madison proposed this item, which became Amendment X of the Constitution: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Antifederalist leaders wanted to insert the word "expressly" in front of the word "delegated" in Madison's proposal. They recalled the wording in Article II of the Articles of Confederation, which stated: "Each state retains its sovereignty, freedom, and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled."

These men, and many others, also expressed concern about the "necessary and proper" clause of Article I, Section 8 of the Constitution. That clause states: "The Congress shall have Power. . . . To make all laws which shall be necessary and proper for carrying into Execution the foregoing Power, and all other Powers vested by this Constitution in the government of the United States, or in any Department or Officer thereof."

Antifederalists felt that this clause would allow Congress to do many things not expressly provided for in the Constitution. Supporters of the Constitution like Hamilton considered a Bill of Rights unnecessary because Congress had no power to legislate on such matters as religion or freedom of speech. Opponents of the Constitution, however, pointed to the "necessary and proper" clause and expressed the fear that someday Congress might think it "necessary and proper" to limit the right of people to express their opposition to the policies of the government, to deny people right to a jury trial, or even to arrest large numbers of people and hold them without trial. Voicing such fears, some men in Congress wanted to limit the power of the government to those powers "expressly" granted to it.

Madison objected strongly to all attempts to include the words "expressly delegated" in his proposed amendment. He believed that to do so would limit too strictly the power of the new federal government and might render it as ineffective as the government created under the Articles of Confederation had been. A large majority in Congress agreed with Madison on this matter, while recognizing as he did the general need to add a Bill of Rights to the Constitution.

Congress approved twelve amendments. More than two-thirds of the members voted for the amendments, as required by Article V of the Constitution. Congress then sent the amendments to the states in accordance with Article V. After three-fourths of the states ratified ten of these amendments (December 15, 1791), they became part of the Constitution. These amendments to the Constitution (I-X) are called the Bill of Rights.

The Bill of Rights of 1791 applied only to the federal government. These first ten amendments limited the power of the federal government in certain ways; they provided legal safeguards against certain tyrannical acts by the government of the United States. However, as formulated in 1791, the first ten amendments did not apply to the state governments. People in each state had to look to their own state constitutions for guarantees of their civil liberties and rights.

Examining Ideas of Madison and Hamilton About the Bill of Rights

1. What choices did Madison make about a federal Bill of Rights on these three occasions?
    a. the Constitutional Convention, 1787
    b. the Virginia Ratifying Convention, 1788
    c. the First Session of Congress, 1789

2. What changes in Madison's decisions on a Bill of Rights from 1787-1789 suggest a change of opinion? Explain. Why did he change his mind?

3. What is your judgment of Madison's decisions about a Bill of Rights in 1787, 1788, and 1789? Did he decide correctly on each occasion? Were his decisions good or bad? Explain.

4. *Amendment X of the Constitution says:* "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

By contrast, Article II of the Articles of Confederation says: "Each state retains its sovereignty, freedom, and independence and every Power, Jurisdiction and right, which is not by this confederation *expressly* delegated to the United States, in Congress assembled."

Antifederalist leaders wanted to insert the word "expressly" in front of the word "delegated" in Amendment X of the Constitution. Madison objected strongly to attempts to include the words "expressly delegated" in his proposed Tenth Amendment, and his position was victorious; members of Congress voted down this proposal.

a. Explain Madison's position on Amendment X. Why did he argue for it?

b. How might the Antifederalist position on Amendment X have changed the operation of government under the Constitution, if it had been accepted by Congress and the states?

5. Compare Hamilton's idea in essay 84 of *The Federalist* with Madison's ideas about amending the Constitution, which were advanced at the first session of Congress in 1789. (Examine a copy of Amendments I-X of the Constitution, which were developed from Madison's ideas). To what extent did Madison's position of 1789 differ from Hamilton's position in essay 84?

6. To what extent do you agree or disagree with the main ideas of Hamilton's essay 84?

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TEACHING PLAN
FOR LESSON 10:
CHRONOLOGY OF MAIN EVENTS ASSOCIATED WITH THE ORIGIN AND WRITING OF THE FEDERALIST

Preview of Main Points

This lesson is a timetable of events associated with the origin and writing of *The Federalist*. The chronology includes events in the writing and ratification of the Constitution, which provide a context for key dates in the writing and publication of *The Federalist* papers.

Curriculum Connection

This lesson fits standard textbook treatments of events preceding the Constitutional Convention, events of the Convention, and events associated with ratification of the Constitution. Thus, it fits standard civics, government, and American history textbooks, which include at least one chapter on the "Founding Period."

Objectives

Students are expected to:

(1) Use a timetable of events to locate facts.
(2) Use a timetable to answer questions about the chronology of main events associated with the writing and publication of *The Federalist.*
(3) Arrange events in chronological order.
(4) Match events with the dates of those events.
(5) Interpret facts presented in a chronological list.

Suggestions for Teaching the Lesson

Opening the Lesson. Ask students to read the events in the timetable and to raise questions about the writing and publication of *The Federalist*. Discussion of these questions can be used as a review of material covered in preceding lessons on *The Federalist* and as a review of textbook treatments of the ratification of the Constitution.

Assign activities about the timetable at the end of the lesson.

Developing the Lesson. Have students use the timetable to complete Activities 1 and 2 at the end of the lesson. The activities are (1) Arranging Events in Chronological Order and (2) Matching Activity.

Discuss correct answers with students. See the answers at the end of the lesson plan.

Concluding the Lesson. Have students complete the activity at the very end of the lesson. It is titled, "Interpreting Facts."

Discuss items in the final activity with students. This activity involves interpretive and speculative responses. There may be reasonable differences in the answers of students. Probe for reasons in support of responses.

Answers to Activities 1 and 2

1. Events below are listed in chronological order.
    g. The Constitutional Convention ended
    j. Hamilton's first published response to Antifederalist critics
    a. first "Federalist" essay printed
    f. Volume 2 of *The Federalist* published
    e. New Hampshire ratified the Constitution
    b. Constitution officially recognized as ratified
    h. New York ratified the Constitution
    c. Washington inaugurated as President
    d. North Carolina ratified the Constitution
    i. Rhode Island ratified the Constitution
2. Answers to Matching Activity (Roman numerals that belong in the spaces in List B.)

(1) V (2) VII (3) III (4) VI (5) I
(6) IV (7) IX (8) II (9) VIII (10) X

LESSON 10:
CHRONOLOGY OF MAIN EVENTS ASSOCIATED WITH THE ORIGIN AND WRITING OF THE FEDERALIST

Main events associated with the origin and writing of *The Federalist* appear below in chronological order. The list includes events preceding the writing of *The Federalist* and events pertaining to the writing and publication of *The Federalist*.

1. **February 21, 1787.** Congress gave official approval for a convention to meet in Philadelphia "for a sole purpose of revising the Articles of Confederation. . . ."
2. **May 25, 1787.** A quorum of delegates from seven states met in Philadelphia to start the Constitutional Convention.
3. **May 29, 1787.** Edmund Randolph introduced the Virginia Plan to the Convention. This proposal, which was drafted primarily by James Madison, involved more than a revision of the Articles of Confederation. It proposed a strong national government to replace the ineffective government under the Articles. The Virginia Plan called for a new government and Constitution. From this point, the Convention moved toward creating a plan for government that would replace, not merely alter, the Articles of Confederation.
4. **May 29-September 8, 1787.** Participants in the Constitutional Convention proposed and discussed ideas and made decisions that created the Constitution, a new plan for government of the United States.
5. **September 8, 1787.** A committee on style was appointed to write a final draft of the Constitution.
6. **September 12, 1787.** The Committee on Style presented a draft of the Constitution to the Convention.
7. **September 13-15.** Delegates examined the final draft and made a few minor changes to it.
8. **September 17, 1787.** Each of the twelve state delegations voted to approve a final copy of the Constitution. However, three of the 42 delegates present at this final meeting refused to sign the document. The Convention was ended. Thirteen other delegates, who had attended other meetings of the Convention, were not present at this final meeting.
9. **September 20, 1787.** Congress received the proposed Constitution from the delegates to the Constitutional Convention.
10. **September 28, 1787.** Congress voted to send the Constitution to the legislature of each state. Congress asked each state to convene a special ratifying convention, which would either approve or reject the Constitution.
11. **September 27, 1787.** Governor George Clinton of New York began a campaign to oppose ratification of the Constitution. He is alleged to have written an article arguing against it that appeared in the *New York Journal*, a newspaper of New York City. The article was signed with a pseudonym, Cato.
12. **October 1, 1787.** Alexander Hamilton's reply to Cato, in defense of the Constitution, appeared in print in the *New York Daily Advertiser.* Hamilton's article was signed with a pseudonym, Caesar. The debate on the Constitution, between Federalists (such as Hamilton) and Antifederalists (such as Clinton) was underway.
13. **October 1-October 27, 1787.** Alexander Hamilton conceived of *The Federalist* papers—a series of essays to explain the Constitution and promote the ratification of it.
14. **October 27, 1787.** The first of *The Federalist* papers appeared in a New York City newspaper, *The Independent Journal.* It was written by Hamilton. During the next six months, a total of 85 essays were written and published. They brilliantly analyzed and defended the Constitution. Alexander Hamilton wrote 51 of the articles, James Madison wrote 29 of them, and John Jay wrote five of the essays. All of the essays were signed with a pseudonym, Publius.
15. **December 7, 1787.** Delaware was the first state to ratify the Constitution. The vote was unanimous, 30-0.
16. **December 12, 1787.** Pennsylvania was the second state to ratify the Constitution. The vote was 46-23.
17. **December 18, 1787.** New Jersey was the third state to ratify the Constitution. The vote was 38-0.
18. **January 2, 1788.** Georgia was the fourth state to ratify the Constitution. The vote was 26-0.
19. **January 9, 1788.** Connecticut was the fifth state to ratify the Constitution. The vote was 128-40.
20. **February 6, 1788.** Massachusetts was the sixth state to ratify the Constitution. The vote was 187-168.
21. **March 22, 1788.** Volume 1 of *The Federalist* was published by McLean and Company. This volume included 36 essays, which had previously appeared in New York newspapers.
22. **April 2, 1788.** The last of *The Federalist* essays (77) to appear first in a newspaper was published.
23. **April 28, 1788.** Maryland was the seventh state to ratify the Constitution. The vote was 63-11.

24. **May 23, 1788.** South Carolina was the eighth state to ratify the Constitution. The vote was 149-73.
25. **May 28, 1788.** Eight essays of *The Federalist,* numbers 78-85, appeared in print for the first time in Volume 2 of *The Federalist* published by the McLean Company. This volume included numbers 37-85; Volume 1, published in March of 1787, included numbers 1-36. The complete collection of *The Federalist* essays was in print.
26. **June 21, 1788.** New Hampshire was the ninth state to ratify the Constiution. The vote was 57-47. Under the provisions of Article VII of the Constitution, enough states had now ratified the constitution to give it the force of law.
27. **June 25, 1788.** Virginia was the tenth state to ratify the Constitution. The vote was 89-79.
28. **July 2, 1788.** Cyrus Griffin, the president of Congress, recognized officially that nine states had ratified the Constitution, thereby establishing it as a new frame of government of the states that had approved it.
29. **July 26, 1788.** New York was the eleventh state to ratify the Constitution. The vote was 30-27.
30. **September 13, 1788.** Congress named New York city as the site of the new government under the Constitution.
31. **February 4, 1789.** Members of the Electoral College voted unanimously for George Washington to become President of the United States. This procedure was carried out according to the Constitution of 1787.
32. **April 1, 1789.** The House of Representatives, elected under the new Constitution, was organized, with 30 of its 59 members present.
33. **April 6, 1789.** The Senate met, with 9 of its 22 members present. As required by the Constitution, Senators counted ballots that had been cast by presidential electors and declared George Washington President of the United States. John Adams won election as Vice President.
34. **April 30, 1789.** George Washington was inaugurated as first President of the United States. He took the oath of office prescribed by the Constitution.
35. **November 21, 1789.** North Carolina was the twelfth state to ratify the Constitution. The vote was 194-77.
36. **May 29, 1790.** Rhode Island was the thirteenth state to ratify the Constitution. The vote was 34-32.

Using Facts About Chronology

1. **Arranging Events in Chronological Order.** The items in the list below are NOT in chronological order. Rearrange these items in chronological order (the order in which they happened). Write your list of items correctly, in chronological order, on a separate piece of paper. Refer to the list of events on preceding pages of this lesson to help you complete this exercise.

Scrambled List of Ten Events

a. First "Federalist" essay printed in a New York newspaper
b. the Constitution was recognized officially as ratified
c. George Washington was inaugurated as President
d. North Carolina ratified the Constitution
e. New Hampshire ratified the Constitution
f. Volume 2 of *The Federalist* was published
g. The Constitutional Convention ended
h. New York ratified the Constitution
i. Rhode Island ratified the Constitution
j. Article by "Caesar" appeared in New York newspaper

2. **Matching Activity.** Match dates in LIST A with correct events in LIST B . Write the numeral next to a date in LIST A in the correct space next to an event in LIST B.

LIST A			LIST B
I	Oct. 27, 1787	___(1)	New York ratified Constitution
II	May 29, 1790	___(2)	Constitutional Convention started
III	May 28, 1788	___(3)	Vol. 2, *The Federalist* published
IV	April 30, 1789	___(4)	Virginia ratified Constitution
V	July 26, 1788	___(5)	1st "Federalist" essay printed
VI	June 25, 1788	___(6)	Washington became 1st President under the Constitution
VII	May 25, 1787	___(7)	Constitutional Convention Ended
VIII	Sept. 27, 1787	___(8)	Rhode Island ratified Constitution
IX	Sept. 17, 1787	___(9)	"Cato" article was printed in New York newspaper
X	March 22, 1788	___(10)	Vol. 1, *The Federalist* published

3. **Interpreting Facts.** Refer to facts in the list of events on preceding pages of this lesson to respond to the items below.

a. Identify at least three events that can be linked to the origin of the project to write and publish *The Federalist.*

b. Which five events in the list on the preceding pages would you identify as most significant in the history of the United States during the 1780s? List these events in chronological order. Be prepared to explain your choices.

APPENDIX

PAPERS SELECTED FROM THE FEDERALIST

This Appendix includes ten essays of *The Federalist.* Ideas and excerpts from these ten *Federalist* papers are emphasized in the ten lessons of this volume. The essays in this Appendix are listed below.

Number 1: Hamilton
Number 9: Hamilton
Number 10: Madison
Number 23: Hamilton
Number 39: Hamilton
Number 41: Madison
Number 51: Madison
Number 53: Madison
Number 70: Hamilton
Number 78: Hamilton

NUMBER 1: HAMILTON

After an unequivocal experience of the inefficacy of the subsisting federal government, you are called upon to deliberate on a new Constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire in many respects the most interesting in the world. It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force. If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind.

This idea will add the inducements of philanthropy to those of patriotism, to heighten the solicitude which all considerate and good men must feel for the event. Happy will it be if our choice should be directed by a judicious estimate of our true interests, unperplexed and unbiased by considerations not connected with the public good. But this is a thing more ardently to be wished than seriously to be expected. The plan offered to our deliberations affects too many particular interests, innovates upon too many local institutions, not to involve in its discussion a variety of objects foreign to its merits, and of views, passions, and prejudices little favorable to the discovery of truth.

Among the most formidable of the obstacles which the new Constitution will have to encounter may readily be distinguished the obvious interest of a certain class of men in every State to resist all changes which may hazard a diminution of the power, emolument, and consequence of the offices they hold under the State establishments; and the perverted ambition of another class of men, who will either hope to aggrandize themselves by the confusions of their country, or will flatter themselves with fairer prospects of elevation from the subdivision of the empire into several partial confederacies than from its union under one government.

It is not, however, my design to dwell upon observations of this nature. I am well aware that it would be disingenuous to resolve indiscriminately the opposition of any set of men (merely because their situations might subject them to suspicion) into interested or ambitious views. Candor will oblige us to admit that even such men may be actuated by upright intentions; and it cannot be doubted that much of the opposition which has made its appearance, or may hereafter make its appearance, will spring from sources, blameless at least if not respectable—the honest errors of minds led astray by preconceived jealousies and fears. So numerous indeed and so powerful are the causes which serve to give a false bias to the judgment, that we, upon many occasions, see wise and good men on the wrong as well as on the right side of questions of the first magnitude to society. This circumstance, if duly attended to, would furnish a lesson of moderation to those who are ever so thoroughly persuaded of their being in the right in any controversy. And a further reason for caution, in this respect, might be drawn from the reflection that we are not always sure that those who advocate the truth are influenced by purer principles than their antagonists. Ambition, avarice, personal animosity, party opposition, and many other motives not more laudable than these, are apt to operate as well upon those who support as those who oppose the right side of a question. Were there not even these inducements to moderation, nothing could be more ill-judged than that intolerant spirit which has at all times characterized political parties. For in politics, as in religion, it is equally absurd to aim at making proselytes by fire and sword. Heresies in either can rarely be cured by persecution.

And yet, however just these sentiments will be allowed to be, we have already sufficient indications that it will happen in this as in all former cases of great national discussion. A torrent of angry and malignant passions will be let loose. To judge from the conduct of the opposite parties, we shall be led to conclude that they will mutually hope to evince the justness of their opinions, and to increase the number of their converts by the loudness of their declamations and by the bitterness of their invectives. An enlightened zeal for the energy and efficiency of government will be stigmatized as the offspring of a temper fond of despotic power and hostile to the principles of liberty. An over-scrupulous jealousy of danger to the rights of the people, which is more commonly the fault of the head than of the heart, will be represented as mere pretense and artifice, the stale bait for popularity at the expense of public good. It will be forgotten, on the one hand, that jealousy is the usual concomitant of violent love, and that the noble enthusiasm of liberty is too apt to be infected with a spirit of narrow and illiberal distrust. On the other hand, it will be equally forgotten that the vigor of government is essential to the security of liberty; that, in the contemplation of a sound and well-informed judgment, their interests can never be separated; and that a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people than under the forbidding appearance of zeal for the firmness and efficiency of government. History will teach us that the former has been found a much more certain road to the introduction of despotism than the latter, and that of those men who have overturned the liberties of republics, the greatest number have begun their career by paying an obsequious court to the people, commencing demagogues and ending tyrants.

In the course of the preceding observations, I have had an eye, my fellow-citizens, to putting you upon your guard against all attempts, from whatever quarter, to influence your decision in a matter of the utmost moment to your welfare by any impressions other than those which may result from the evidence of truth. You will, no doubt, at the same time have collected from the general scope of them that they proceed from a source not unfriendly to the new Constitution. Yes, my countrymen, I own to you that after having given it an attentive consideration, I am clearly of opinion it is your interest to adopt it. I am convinced that this is the safest course for your liberty, your dignity, and your happiness. I affect not reserves which I do not feel. I will not amuse you with an appearance of deliberation when I have decided. I frankly acknowledge to you my convictions, and I will freely lay before you the reasons on which they are founded. The consciousness of good intentions disdains ambiguity. I shall not, however, multiply professions on this head. My motives must remain in the depository of my own breast. My arguments will be open to all and may be judged of by all. They shall at least be offered in a spirit which will not disgrace the cause of truth.

I propose, in a series of papers, to discuss the following interesting particulars:—*The utility of the UNION to your political prosperity—The insufficiency of the present Confederation to preserve that Union—The necessity of a government at least equally energetic with the one proposed, to the attainment of this object—The conformity of the proposed Constitution to the true principles of republican government—Its analogy to your own State constitution—and lastly, The additional security which its adoption will afford to the preservation of that species of government, to liberty, and to property.*

In the progress of this discussion I shall endeavor to give a satisfactory answer to all the objections which shall have made their appearance, that may seem to have any claim to your attention.

It may perhaps be thought superfluous to offer arguments to prove the utility of the UNION, a point, no doubt, deeply engraved on the hearts of the great body of the people in every State, and one which, it may be imagined, has no adversaries. But the fact is that we already hear it whispered in the private circles of those who oppose the new Constitution, that the thirteen States are of too great extent for any general system, and that we must of necessity resort to separate confederacies of distinct portions of the whole.* This doctrine will, in all probability, be gradually propagated, till it has votaries enough to countenance an open avowal of it. For nothing can be more evident to those who are able to take an enlarged view of the subject than the alternative of an adoption of the new Constitution or a dismemberment of the Union. It will therefore be of use to begin by examining the advantages of that Union, the certain evils, and the probable dangers, to which every State will be exposed from its dissolution. This shall accordingly constitute the subject of my next address.
PUBLIUS

NUMBER 9: HAMILTON

A firm Union will be of the utmost moment to the peace and liberty of the States as a barrier against domestic faction and insurrection. It is impossible to read the history of the petty republics of Greece and Italy without feeling sensations of horror and disgust at the distractions with which they are continually agitated, and at the rapid succession of revolutions by which they were kept in a state of perpetual vibration between the extremes of tyranny and anarchy. If they exhibit occasional calms, these only serve as short-lived contrasts to the furious storms that are to succeed. If now and then intervals of felicity open themselves to view, we behold them with a mixture of regret, arising from the reflection that the pleasing scenes before us are soon to be overwhelmed by the tempestuous waves of sedition and party rage. If momentary rays of glory break forth from the gloom, while they dazzle us with a transient and fleeting brilliancy, they at the same time admonish us to lament that the vices of government should pervert the direction and tarnish the luster of those bright talents and exalted endowments for which the favored soils that produced them have been so justly celebrated.

From the disorders that disfigure the annals of those republics the advocates of despotism have drawn arguments, not only against the forms of republican government, but against the very principles of civil liberty. They have decried all free government as inconsistent with the order of society, and have indulged themselves in malicious exultation over its friends and partisans. Happily for mankind, stupendous fabrics reared on the basis of liberty, which have flourished for ages, have, in a few glorious instances, refuted their gloomy sophisms. And, I trust, America will be the broad and solid foundation of other edifices, not less magnificent, which will be equally permanent monuments of their errors.

But it is not to be denied that the portraits they have sketched of republican government were too just copies of the originals from which they were taken. If it had been found impracticable to have devised models of a more perfect structure, the enlightened friends to liberty would have been obliged to abandon the cause of that species of government as indefensible. The science of politics, however, like most other sciences, has received great improvement. The efficacy of various principles is now well understood, which were either not known at all, or imperfectly known to the ancients. The regular distribution of power into distinct departments; the introduction of legislative balances and checks; the institution of courts composed of judges holding their offices during good behavior; the representation of the people in the legislature by deputies of their own election: these are wholly new discoveries, or have made their principal progress towards perfection in modern times. They are means, and powerful means, by which the excellencies of republican government may be retained and its imperfections lessened or avoided. To this catalogue of circumstances that tend to the amelioration of popular systems of civil government, I shall venture, however novel it may appear to some, to add one more, on a principle which has been made the foundation of an objection to the new Constitution; I mean the ENLARGEMENT of the ORBIT within which such systems are to revolve, either in respect to the dimensions of a single State, or to the consolidation of several smaller States into one great Confederacy. The latter is that which immediately concerns the object under consideration. It will, however, be of use to examine the principle in its application to a single State, which shall be attended to in another place.

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* The same idea, tracing the arguments to their consequences, is held out in several of the late publications against the new Constitution.

The utility of a Confederacy, as well to suppress faction and to guard the internal tranquillity of States as to increase their external force and security, is in reality not a new idea. It has been practised upon in different countries and ages, and has received the sanction of the most applauded writers on the subjects of politics. The opponents of the PLAN proposed have, with great assiduity, cited and circulated the observations of Montesquieu on the necessity of a contracted territory for a republican government. But they seem not to have been apprised of the sentiments of that great man expressed in another part of his work, nor to have adverted to the consequences of the principle to which they subscribe with such ready acquiescence.

When Montesquieu recommends a small extent for republics, the standards he had in view were of dimensions far short of the limits of almost every one of these States. Neither Virginia, Massachusetts, Pennsylvania, New York, North Carolina, nor Georgia can by any means be compared with the models from which he reasoned and to which the terms of his description apply. If we therefore take his ideas on this point as the criterion of truth, we shall be driven to the alternative either of taking refuge at once in the arms of monarchy, or of splitting ourselves into an infinity of little, jealous, clashing, tumultuous commonwealths, the wretched nurseries of unceasing discord and the miserable objects of universal pity or contempt. Some of the writers who have come forward on the other side of the question seem to have been aware of the dilemma; and have even been bold enough to hint at the division of the larger States as a desirable thing. Such an infatuated policy, such a desperate expedient, might, by the multiplication of petty offices, answer the views of men who possess not qualifications to extend their influence beyond the narrow circles of personal intrigue, but it could never promote the greatness or happiness of the people of America.

Referring the examination of the principle itself to another place, as has been already mentioned, it will be sufficient to remark here that, in the sense of the author who has been most emphatically quoted upon the occasion, it would only dictate a reduction of the SIZE of the more considerable MEMBERS of the Union, but would not militate against their being all comprehended in one confederate government. And this is the true question, in the discussion of which we are at present interested.

So far are the suggestions of Montesquieu from standing in opposition to a general Union of the States that he explicitly treats of a CONFEDERATE REPUBLIC as the expedient for extending the sphere of popular government and reconciling the advantages of monarchy with those of republicanism.

"It is very probable" (says he*) "that mankind would have been obliged at length to live constantly under the government of a SINGLE PERSON, had they not contrived a kind of constitution that has all the internal advantages of a republican, together with the external force of a monarchial, government. I mean a CONFEDERATE REPUBLIC.

"This form of government is a convention by which several smaller *states* agree to become members of a larger one, which they intend to form. It is a kind of assemblage of societies that constitute a new one, capable of increasing, by means of new associations, till they arrive to such a degree of power as to be able to provide for the security of the united body.

"A republic of this kind, able to withstand an external force, may support itself without any internal corruptions. The form of this society prevents all manner of inconveniences.

"If a single member should attempt to usurp the supreme authority, he could not be supposed to have an equal authority and credit in all the confederate states. Were he to have too great influence over one, this would alarm the rest. Were he to subdue a part, that which would still remain free might oppose him with forces independent of those which he had usurped, and overpower him before he could be settled in his usurpation.

"Should a popular insurrection happen in one of the confederate states, the others are able to quell it. Should abuses creep into one part, they are reformed by those that remain sound. The state may be destroyed on one side, and not on the other; the confederacy may be dissolved, and the confederates preserve their sovereignty.

"As this government is composed of small republics, it enjoys the internal happiness of each; and with respect to its external situation, it is possessed, by means of the association, of all the advantages of large monarchies."

I have thought it proper to quote at length these interesting passages, because they contain a luminous abridgment of the principal arguments in favor of the Union, and must effectually remove the false impressions which a misapplication of other parts of the world was calculated to produce. They have, at the same time, an intimate connection with the more immediate design of this paper, which is to illustrate the tendency of the Union to repress domestic faction and insurrection.

A distinction, more subtle than accurate, has been raised between a *confederacy* and a *consolidation* of the States. The essential characteristic of the first is said to be the restriction of its authority to the members in their collective capacities, without reaching to the individuals of whom they are composed. It is contended that the national council ought to have no concern with any object of internal administration. An exact equality of suffrage between the members has also been insisted upon as a leading feature of a confederate government. These positions are, in the main, arbitrary; they are supported neither by principle nor precedent. It has indeed happened that governments of this kind have generally operated in the manner which the distinction, taken notice of, supposes to be inherent in their nature; but there have been in most of them extensive exceptions to the practice, which

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* *Spirit of Laws*, Vol. I., Book IX., Chap. I.

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serve to prove, as far as example will go, that there is no absolute rule on the subject. And it will be clearly shown, in the course of this investigation, that as far as the principle contended for has prevailed, it has been the cause of incurable disorder and imbecility in the government.

The definition of a *confederate republic* seems simply to be "an assemblage of societies," or an association of two or more states into one state. The extent, modifications, and objects of the federal authority are mere matters of discretion. So long as the separate organization of the members be not abolished; so long as it exists, by a constitutional necessity, for local purposes; though it should be in perfect subordination to the general authority of the union, it would still be, in fact and in theory, an association of states, or a confederacy. The proposed Constitution, so far from implying an abolition of the State governments, makes them constituent parts of the national sovereignty, by allowing them a direct representation in the Senate, and leaves in their possession certain exclusive and very important portions of sovereign power. This fully corresponds, in every rational import of the terms, with the idea of a federal government.

In the Lycian confederacy, which consisted of twenty-three CITIES, or republics, the largest were entitled to *three* votes in the COMMON COUNCIL, those of the middle class to *two*, and the smallest to *one*. The COMMON COUNCIL had the appointment of all the judges and magistrates of the respective CITIES. This was certainly the most delicate species of interference in their internal administration; for if there be any thing that seems exclusively appropriated to the local jurisdictions, it is the appointment of their own officers. Yet Montesquieu, speaking of this association, says: "Were I to give a model of an excellent Confederate Republic, it would be that of Lycia." Thus we perceive that the distinctions insisted upon were not within the contemplation of this enlightened civilian; and we shall be led to conclude that they are the novel refinements of an erroneous theory. PUBLIUS

NUMBER 10: MADISON

Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils have, in truth, been the mortal diseases under which popular governments have everywhere perished, as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labor have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements and alarm for private rights which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administration.

By a faction I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. So strong is this propensity of mankind to fall into mutual animosities that where no substantial occasion presents itself the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation and involves the spirit of party and faction in the necessary and ordinary operations of government.

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or in other words, the most powerful faction must be expected to prevail. Shall domestic manufacturers be encouraged, and in what degree, by restrictions on foreign manufacturers? are questions which would be differently decided by the landed and the manufacturing classes, and probably by neither with a sole regard to justice and the public good. The appointment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number is a shilling saved to their own pockets.

It is in vain to say that enlightened statesmen will be able to adjust these clashing interests and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can such an adjustment be made at all without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole.

The inference to which we are brought is that the causes of faction cannot be removed and that relief is only to be sought in the means of controlling its *effects*.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add that it is the great desideratum by which alone this form of government can be rescued from the opprobrium under which it has so long labored and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together, that is, in proportion as their efficacy becomes needful.

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would at the same time be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens and greater sphere of country over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Man of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests of the people. The question resulting is, whether small or extensive republics are most favorable to the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by two obvious considerations.

In the first place it is to be remarked that however small the republic may be the representatives must be raised to a certain number in order to guard against the cabals of a few; and that however large it may be they must be limited to a certain number in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the constituents, and being proportionally greatest in the small republic, it follows that if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practise with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to center on men who possess the most attractive merit and the most diffusive and established characters.

It must be confessed that in this, as in most other cases, there is a mean, on both sides of which inconveniencies will be found to lie. By enlarging too much the number of electors, you render the representative too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal Constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the State legislatures.

The other point of difference is the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.

Hence, it clearly appears that the same advantage which a republic has over a democracy in controlling the effects of faction is enjoyed by a large over a small republic—is enjoyed by the Union over the States composing it. Does this advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and to schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here again the extent of the Union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular States but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it, in the same proportion as such a malady is more likely to taint a particular county or district than an entire State.

In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans ought to be our zeal in cherishing the spirit and supporting the character of federalists. PUBLIUS

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The necessity of a Constitution, at least equally energetic with the one proposed, to the preservation of the Union is the point at the examination of which we are now arrived.

This inquiry will naturally divide itself into three branches—the objects to be provided for by a federal government, the quantity of power necessary to the accomplishment of those objects, the persons upon whom that power ought to operate. Its distribution and organization will more properly claim our attention under the succeeding head.

The principal purposes to be answered by union are these—the common defense of the members; the preservation of the public peace, as well against internal convulsions as external attacks; the regulation of commerce with other nations and between the States; the superintendence of our intercourse, political and commercial, with foreign countries.

The authorities essential to the common defense are these: to raise armies; to build and equip fleets; to prescribe rules for the government of both; to direct their operations; to provide for their support. These powers ought to exist without limitation, *because it is impossible to foresee or to define the extent and variety of national exigencies, and the cor-*

respondent extent and variety of the means which may be necessary to satisfy them. The circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed. This power ought to be coextensive with all the possible combinations of such circumstances; and ought to be under the direction of the same councils which are appointed to preside over the common defense.

This is one of those truths which to a correct and unprejudiced mind carries its own evidence along with it, and may be obscured, but cannot be made plainer by argument or reasoning. It rests upon axioms as simple as they are universal; the means ought to be proportioned to the end; the persons from whose agency the attainment of any end is expected ought to possess the means by which it is to be attained.

Whether there ought to be a federal government intrusted with the care of the common defense is a question in the first instance open to discussion; but the moment it is decided in the affirmative, it will follow that that government ought to be clothed with all the powers requisite to complete execution of its trust. And unless it can be shown that the circumstances which may affect the public safety are reducible within certain determinate limits; unless the contrary of this position can be fairly and rationally disputed, it must be admitted as a necessary consequence that there can be no limitation of that authority which is to provide for the defense and protection of the community in any matter essential to its efficacy—that is, in any matter essential to the *formation, direction, or support* of the NATIONAL FORCES.

Defective as the present Confederation has been proved to be, this principle appears to have been fully recognized by the framers of it; though they have not made proper or adequate provision for its exercise. Congress have an unlimited discretion to make requisitions of men and money; to govern the army and navy; to direct their operations. As their requisitions are made constitutionally binding upon the States, who are in fact under the most solemn obligations to furnish the supplies required of them, the intention evidently was that the United States should command whatever resources were by them judged requisite to the "common defense and general welfare." It was presumed that a sense of their true interests, and a regard to the dictates of good faith, would be found sufficient pledges for the punctual performance of the duty of the members to the federal head.

The experiment has, however, demonstrated that this expectation was ill-founded and illusory; and the observations made under the last head will, I imagine, have sufficed to convince the impartial and discerning that there is an absolute necessity for an entire change in the first principles of the system; that if we are in earnest about giving the Union energy and duration we must abandon the vain project of legislating upon the States in their collective capacities; we must extend the laws of the federal government to the individual citizens of America; we must discard the fallacious scheme of quotas and requisitions as equally impracticable and unjust. The result from all this is that the Union ought to be invested with full power to levy troops; to build and equip fleets; and to raise the revenues which will be required for the formation and support of an army and navy in the customary and ordinary modes practiced in other governments.

If the circumstances of our country are such as to demand a compound instead of a simple, a confederate instead of a sole, government, the essential point which will remain to be adjusted will be to discriminate the OBJECTS, as far as it can be done, which shall appertain to the different provinces or departments of power; allowing to each the most ample authority for fulfilling the objects committed to its charge. Shall the Union be constituted the guardian of the common safety? Are fleets and armies and revenues necessary to this purpose? The government of the Union must be empowered to pass all laws, and to make all regulations which have relation to them. The same must be the case in respect to commerce, and to every other matter to which its jurisdiction is permitted to extend. Is the administration of justice between the citizens of the same State the proper department of the local governments? These must possess all the authorities which are connected with this object, and with every other that may be allotted to their particular cognizance and direction. Not to confer in each case a degree of power commensurate to the end would be to violate the most obvious rules of prudence and propriety, and improvidently to trust the great interests of the nation to hands which are disabled from managing them with vigor and success.

Who so likely to make suitable provisions for the public defense as that body to which the guardianship of the public safety is confided; which, as the center of information, will best understand the extent and urgency of the dangers that threaten; as the representative of the WHOLE, will feel itself most deeply interested in the preservation of every part; which, from the responsibility implied in the duty assigned to it, will be most sensibly impressed with the necessity of proper exertions; and which, by the extension of its authority throughout the States, can alone establish uniformity and concert in the plans and measures by which the common safety is to be secured? Is there not a manifest inconsistency in devolving upon the federal government the care of the general defense and leaving in the State governments the *effective* powers by which it is to be provided for? Is not a want of co-operation the infallible consequence of such a system? And will not weakness, disorder, an undue distribution of the burdens and calamities of war, an unnecessary and intolerable increase of expense, be its natural and inevitable concomitants? Have we not had unequivocal experience of its effects in the course of the revolution which we have just achieved?

Every view we may take of the subject, as candid inquirers after truth, will serve to convince us that it is both unwise and dangerous to deny the federal government an unconfined authority in respect to all those objects which are intrusted to its management. It will indeed deserve the most vigilant and careful attention of the people to see that it be modeled in such a manner as to admit of its being safely vested with the requisite powers. If any plan which has been, or may be, offered to our consideration should not, upon a dispassionate inspection, be found to answer this description, it ought to be rejected. A government, the constitution of which renders it unfit to be trusted with all the powers which a free people *ought to delegate to any government,* would be an unsafe and improper depositary of the NATIONAL INTERESTS. Wherever THESE can with propriety be confided, the co-incident powers may safely accompany them. This is the true result of all just reasoning upon the subject. And the adversaries of the plan promulgated by the convention would have given a better impression of their candor if they had confined themselves to showing that the internal structure of the proposed government was such as to render it unworthy of the confidence of the people. They ought not to have wandered into inflammatory declamations and unmeaning cavils about the extent of the powers. The POWERS are not too extensive for the OBJECTS of federal administration, or, in other words, for the management of our NATIONAL INTERESTS; nor can any satisfactory argument be framed to show that they are chargeable with such an excess. If it be true, as has been insinuated by some of the writers on the other side, that the difficulty arises from the nature of the thing, and that the extent of the country will not permit us to form a government in which such ample powers can safely be reposed, it would prove that we ought to contract our views, and resort to the expedient of separate confederacies, which will move within more practicable spheres. For the absurdity must continually stare us in the face of confiding to a government the direction of the most essential national interests, without daring to trust it to the authorities which are indispensable to their proper and efficient management. Let us not attempt to reconcile contradictions, but firmly embrace a national alternative.

I trust, however, that the impracticability of one general system cannot be shown. I am greatly mistaken if anything of weight has yet been advanced of this tendency; and I flatter myself that the observations which have been made in the course of these papers have served to place the reverse of that position in as clear a light as any matter still in the womb of time and experience is susceptible of. This, at all events, must be evident, that the very difficulty itself, drawn from the extent of the country, is the strongest argument in favor of an energetic government; for any other can certainly never preserve the Union of so large an empire. If we embrace the tenets of those who oppose the adoption of the proposed Constitution as the standard of our political creed we cannot fail to verify the gloomy doctrines which predict the impracticability of a national system pervading the entire limits of the present Confederacy. PUBLIUS

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The last paper having concluded the observations which were meant to introduce a candid survey of the plan of government reported by the convention, we now proceed to the execution of that part of our undertaking.

The first question that offers itself is whether the general form and aspect of the government be strictly republican. It is evident that no other form would be reconcilable with the genius of the people of America; with the fundamental principles of the Revolution; or with that honorable determination which animates every votary of freedom to rest all our political experiments on the capacity of mankind for self-government. If the plan of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible.

What, then, are the distinctive characters of the republican form? Were an answer to this question to be sought, not by recurring to principles but in the application of the term by political writers to the constitutions of different States, no satisfactory one would ever be found. Holland, in which no particle of the supreme authority is derived from the people, has passed almost universally under the denomination of a republic. The same title has been bestowed on Venice, where absolute power over the great body of the people is exercised in the most absolute manner by a small body of hereditary nobles. Poland, which is a mixture of aristocracy and of monarchy in their worst forms, has been dignified with the same appellation. The government of England, which has one republican branch only, combined with an hereditary aristocracy and monarchy, has with equal impropriety been frequently placed on the list of republics. These examples, which are nearly as dissimilar to each other as to a genuine republic, show the extreme inaccuracy with which the term has been used in political disquisitions.

If we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure for a limited period, or during good behavior. It is *essential* to such a government that it be derived from the great body of the society, not from an inconsiderable proportion or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans and claim for their government the honorable title of republic. It is *sufficient* for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other popular government that has been or can be well organized or well executed, would be degraded from the republican character. According to the constitution of every State in the Union, some or other of the officers of government are appointed indirectly only by the people. According to most of them, the chief magistrate himself is so appointed. And according to one, this mode of appointment is extended to one of the co-ordinate branches of the legislature. According to all the constitutions, also, the tenure of the highest offices is extended to a definite period, and in many instances, both within the legislative and executive departments, to a period of years. According to the provisions of most of the constitutions, again, as well as according to the most respectable and received opinions on the subject, the members of the judiciary department are to retain their offices by the firm tenure of good behavior.

On comparing the Constitution planned by the convention with the standard here fixed, we perceived at once that it is, in the most rigid sense, conformable to it. The House of Representatives, like that of one branch at least of all the State legislatures, is elected immediately by the great body of the people. The Senate, like the present Congress, and the Senate of Maryland, derives its appointment indirectly from the people. The President is indirectly derived from the choice of the people, according to the example in most of the States. Even the judges, with all other officers of the Union, will, as in the several States, be the choice, though a remote choice, of the people themselves. The duration of the appointments is equally conformable to the republican standard and to the model of State constitutions. The House of Representatives is periodically elective, as in all the States; and for the period of two years, as in the State of South Carolina. The Senate is elective for the period of six years, which is but one year more than the period of the Senate of Maryland, and but two more than that of the Senates of New York and Virginia. The President is to continue in office for the period of four years; as in New York and Delaware the chief magistrate is elected for three years, and in South Carolina for two years. In the other States the election is annual. In several of the States, however, no explicit provision is made for the impeachment of the chief magistrate. And in Delaware and Virginia he is not impeachable till out of office. The President of the United States is impeachable at any time during his continuance in office. The tenure by which the judges are to hold their places is, as it unquestionably ought to be, that of good behavior. The tenure of the ministerial offices generally will be a subject of legal regulation, conformably to the reason of the case and the example of the State constitutions.

Could any further proof be required of the republican complexion of this system, the most decisive one might be found in its absolute prohibition of titles of nobility, both under the federal and the State governments; and in its express guaranty of the republican form to each of the latter.

"But it was not sufficient," say the adversaries of the proposed Constitution, "for the convention to adhere to the republican form. They ought with equal care to have preserved the *federal* form, which regards the Union as a *Confederacy* of sovereign states; instead of which they have framed a national government, which regards the Union as a *consolidation* of the States." And it is asked by what authority this bold and radical innovation was undertaken? The handle which has been made of this objection requires that it should be examined with some precision.

Without inquiring into the accuracy of the distinction on which the objection is founded, it will be necessary to a just estimate of its force, first, to ascertain the real character of the government in question; secondly, to inquire how far the convention were authorized to propose such a government; and thirdly, how far the duty they owed to their country could supply any defect of regular authority.

First.—In order to ascertain the real character of the government, it may be considered in relation to the foundation on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the operation of those powers; to the extent of them; and to the authority by which future changes in the government are to be introduced.

On examining the first relation, it appears, on one hand, that the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but, on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each State—the authority of the people themselves. The act, therefore, establishing the Constitution will not be a *national* but a *federal* act.

That it will be a federal and not a national act, as these terms are understood by the objectors—the act of the people, as forming so many independent States, not as forming one aggregate nation—is obvious from this single consideration: that it is to result neither from the decision of a *majority* of the people of the Union, nor from that of a *majority* of the States. It must result from the *unanimous* assent of the several States that are parties to it, differing no otherwise from their ordinary assent than in its being expressed, not by the legislative authority, but by that of the people themselves. Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States would bind the minority, in the same manner as the majority in each State must bind the minority; and the will of the majority must be determined either by a comparison of the individual votes, or by considering the will of the majority of the States as evidence of the will of a majority of the people of the United States. Neither of these rules has been adopted. Each State, in ratifying the Constitution, is considered as a sovereign body independent of all others, and only to be bound by its own voluntary act. In this relation, then, the new Constitution will, if established, be a *federal* and not a *national* constitution.

The next relation is to the sources from which the ordinary powers of government are to be derived. The House of Representatives will derive its powers from the people of America; and the people will be represented in the same proportion and on the same principle as they are in the legislature of a particular State. So far the government is *national*, not *federal*. The Senate, on the other hand, will derive its powers from the States as political and coequal societies; and these will be represented on the principle of equality in the Senate, as they now are in the existing Congress. So far the government is *federal*, not *national*. The executive power will be derived from a very compound source. The immediate election of the President is to be made by the States in their political characters. The votes allotted to them are in a compound ratio, which considers them partly as distinct and coequal societies, partly as unequal members of the same society. The eventual election, again, is to be made by that branch of the legislature which consists of the national representatives; but in this particular act they are to be thrown into the form of individual delegations from so many distinct and coequal bodies politic. From this aspect of the government it appears to be of a mixed character, presenting at least as many *federal* as *national* features.

The difference between a federal and national government, as it relates to the *operation of the government*, is by the adversaries of the plan of the convention supposed to consist in this, that in the former the powers operate on the political bodies composing the Confederacy in their political capacities; in the latter, on the individual citizens composing the nation in their individual capacities. On trying the Constitution by this criterion, it falls under the *national* not the *federal* character; though perhaps not so completely as has been understood. In several cases, and particularly in the trial of controversies to which States may be parties, they must be viewed and proceeded against in their collective and political capacities only. But the operation of the government on the people in their individual capacities, in its ordinary and most essential proceedings, will, in the sense of its opponents, on the whole, designate it in this relation, a *national* government.

But if the government be national with regard to the *operation* of its powers, it changes its aspect again when we contemplate it in relation to the extent of its powers. The idea of a national government involves in it not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature. Among communities united for particular purposes, it is vested partly in the general and partly in the municipal legislatures. In the former case, all local authorities are subordinate to the supreme; and may be controlled, directed, or abolished by it at pleasure. In the latter, the local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere. In this relation, then, the proposed government cannot be deemed a *national* one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the compact; and that it ought to be established under the general rather than under the local governments, or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated.

If we try the Constitution by its last relation to the authority by which amendments are to be made, we find it neither wholly national nor wholly *federal*. Were it wholly *national*, the supreme and ultimate authority would reside in the *majority* of the people of the Union; and this authority would be competent at all times, like that of a majority of every national society to alter or abolish its established government. Were it wholly federal, on the other hand, the concurrence of each State in the Union would be essential to every alteration that would be binding on all. The mode provided by the plan of the convention is not founded on either of these principles. In requiring more than a majority, and particularly in computing the proportion by *States*, not by *citizens*, it departs from the national and advances towards the *federal* character; in rendering the concurrence of less than the whole number of States sufficient, it loses again the *federal* and partakes of the *national* character.

The proposed Constitution, therefore, even when tested by the rules laid down by its antagonists, is, in strictness, neither a national nor a federal Constitution, but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal and partly national; in the operation of these powers, it is national, not federal; in the extent of them, again, it is federal, not national; and, finally in the authoritative mode of introducing amendments, it is neither wholly federal nor wholly national. PUBLIUS

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The Constitution proposed by the convention may be considered under two general points of view. The FIRST relates to the sum or quantity of power which it vests in the government, including the restraints imposed on the States. The SECOND, to the particular structure of the government and the distribution of this power among its several branches.

Under the first view of the subject, two important questions arise: 1. Whether any part of the powers transferred to the general government be unnecessary or improper? 2. Whether the entire mass of them be dangerous to the portion of jurisdiction left in the several States?

Is the aggregate power of the general government greater than ought to have been vested in it? This is the first question.

It cannot have escaped those who have attended with candor to the arguments employed against the extensive powers of the government that the authors of them have very little considered how far these powers were necessary means of attaining a necessary end. They have chosen rather to dwell on the inconveniences which must be unavoidably blended with all political advantages; and on the possible abuses which must be incident to every power or trust of which a beneficial use can be made. This method of handling the subject cannot impose on the good sense of the people of America. It may display the subtlety of the writer; it may open a boundless field for rhetoric and declamation; it may inflame the passions of the unthinking and may confirm the prejudices of the misthinking: but cool and candid people will at once reflect that the purest of human blessings must have a portion of alloy in them; that the choice must always be made, if not of the lesser evil, at least of the GREATER, not the PERFECT, good; and that in every political institution, a power to advance the public happiness involves a discretion which may be misapplied and abused. They will see, therefore, that in all cases where power is to be conferred, the point first to be decided is whether such a power be necessary to the public good; as the next will be, in case of an affirmative decision, to guard as effectually as possible against a perversion of the power to the public detriment.

That we may form a correct judgment on this subject, it will be proper to review the several powers conferred on the government of the Union; and that this may be the more conveniently done they may be reduced into different classes as they relate to the following different objects: 1. Security against foreign danger; 2. Regulation of the intercourse with foreign nations; 3. Maintenance of harmony and proper intercourse among the States; 4. Certain miscellaneous objects of general utility; 5. Restraint of the States from certain injurious acts; 6. Provisions for giving due efficacy to all these powers.

The powers falling within the first class are those of declaring war and granting letters of marque; of providing armies and fleets; of regulating and calling forth the militia; of levying and borrowing money.

Security against foreign danger is one of the primitive objects of civil society. It is an avowed and essential object of the American Union. The powers requisite for attaining it must be effectually confided to the federal councils.

Is the power of declaring war necessary? No man will answer this question in the negative. It would be superfluous, therefore, to enter into a proof of the affirmative. The existing Confederation establishes this power in the most ample form.

Is the power of raising armies and equipping fleets necessary? This is involved in the foregoing power. It is involved in the power of self-defense.

But was it necessary to give an INDEFINITE POWER of raising TROOPS, as well as providing fleets; and of maintaining both in PEACE as well as in WAR?

The answer to these questions has been too far anticipated in another place to admit an extensive discussion of them in this place. The answer indeed seems to be so obvious and conclusive as scarcely to justify such a discussion in any place. With what color of propriety could the force necessary for defense be limited by those who cannot limit the force of offense? If a federal Constitution could chain the ambition or set bounds to the exertions of all other nations, then indeed might it prudently chain the discretion of its own government and set bounds to the exertions for its own safety.

How could a readiness for war in time of peace be safely prohibited, unless we could prohibit in like manner the preparations and establishments of every hostile nation? The means of security can only be regulated by the means and the danger of attack. They will, in fact, be ever determined by these rules and by no others. It is in vain to oppose constitutional barriers to the impulse of self-preservation. It is worse than in vain; because it plants in the Constitution itself necessary usurpations of power, every precedent of which is a germ of unnecessary and multiplied repetitions. If one nation maintains constantly a disciplined army, ready for the service of ambition or revenge, it obliges the most pacific nations who may be within the reach of its enterprises to take corresponding precautions. The fifteenth century was the unhappy epoch of military establishments in time of peace. They were introduced by Charles VII of France. All Europe has followed, or been forced into, the example. Had the example not been followed by other nations, all Europe must long ago have worn the chains of a universal monarch. Were every nation except France now to disband its peace establishment, the same event might follow. The veteran legions of Rome were an over-match for the undisciplined valor of all other nations, and rendered her mistress of the world.

Not the less true is it that the liberties of Rome proved the final victim to her military triumphs; and that the liberties of Europe, as far as they ever existed, have, with few exceptions, been the price of her military establishments. A standing force, therefore, is a dangerous, at the same time that it may be a necessary provision. On the smallest scale it has its inconveniences, on an extensive scale, its consequences may be fatal. On any scale it is an object of laudable circumspection and precaution. A wise nation will combine all these considerations; and, whilst it does not rashly preclude itself from any resource which may become essential to its safety, will exert all its prudence in diminishing both the necessity and the danger of resorting to one which may be inauspicious to its liberties.

The clearest marks of this prudence are stamped on the proposed Constitution. The Union itself, which it cements and secures, destroys every pretext for a military establishment which could be dangerous. America united, with a handful of troops, or without a single soldier, exhibits a more forbidding posture to foreign ambition than America disunited, with a hundred thousand veterans ready for combat. It was remarked on a former occasion that the want of this pretext had saved the liberties of one nation in Europe. Being rendered by her insular situation and her maritime resources impregnable to the armies of her neighbors, the rulers of Great Britain have never been able, by real or artificial dangers, to cheat the public into an extensive peace establishment. The distance of the United States from the powerful nations of the world gives them the same happy security. A dangerous establishment can never be necessary or plausible, so long as they continue a united people. But let it never for a moment be forgotten that they are indebted for this advantage to their Union alone. The moment of its dissolution will be the date of a new order of things. The fears of the weaker, or the ambition of the stronger States, or Confederacies, will set the same example in the new as Charles VII did in the old world. The example will be followed here from the same motives which produced universal imitation there. Instead of deriving from our situation the precious advantage which Great Britain has derived from hers, the face of America will be but a copy of that of the continent of Europe. It will present liberty everywhere crushed between standing armies and perpetual taxes. The fortunes of disunited America will be even more disastrous than those of Europe. The sources of evil in the latter are confined to her own limits. No superior powers of another quarter of the globe intrigue among her rival nations, inflame their mutual animosities, and render them the instruments of foreign ambition, jealousy, and revenge. In America the miseries springing from her internal jealousies, contentions, and wars would form a part only of her lot. A plentiful addition of evils would have their source in that relation in which Europe stands to this quarter of the earth, and which no other quarter of the earth bears to Europe.

This picture of the consequences of disunion cannot be too highly colored, or too often exhibited. Every man who loves peace, every man who loves his country, every man who loves liberty ought to have it ever before his eyes that he may cherish in his heart a due attachment to the Union of America and be able to set a due value on the means of preserving it.

Next to the effectual establishment of the Union, the best possible precaution against danger from standing armies is a limitation of the term for which revenue may be appropriated to their support. This precaution the Constitution has prudently added. I will not repeat here the observations which I flatter myself have placed this subject in a just and satisfactory light. But it may not be improper to take notice of an argument against this part of the Constitution, which has been drawn from the policy and practice of Great Britain. It is said that the continuance of an army in that kingdom requires an annual vote of the legislature; whereas the American Constitution has lengthened this critical period to two years. This is the form in which the comparison is usually stated to the public: but is it a just form? Is it a fair comparison? Does the British Constitution restrain the parliamentary discretion to one year? Does the American impose on the Congress appropriations for two years? On the contrary, it cannot be unknown to the authors of the fallacy themselves that the British Constitution fixes no limit whatever to the discretion of the legislature, and that the American ties down the legislature to two years as the longest admissible term.

Had the argument from the British example been truly stated, it would have stood thus: The term for which supplies may be appropriated to the army establishment, though unlimited by the British Constitution, has nevertheless, in practice, been limited by parliamentary discretion to a single year. Now, if in Great Britain, where the House of Commons is elected for seven years; where so great a proportion of the members are elected by so small a proportion of the people; where the electors are so corrupted by the representatives, and the representatives so corrupted by the Crown, the representative body can possess a power to make appropriations to the army for an indefinite term, without desiring, or without daring, to extend the term beyond a single year, ought not suspicion herself to blush, in pretending that the representatives of the United States, elected FREELY by the WHOLE BODY of the people every SECOND YEAR, cannot be safely intrusted with the discretion over such appropriations, expressly limited to the short period of TWO YEARS?

A bad cause seldom fails to betray itself. Of this truth the management of the opposition to the federal government is an unvaried exemplification. But among all the blunders which have been committed, none is more striking than the attempt to enlist on that side the prudent jealousy entertained by the people of standing armies. The attempt has awakened fully the public attention to that important subject; and has led to investigations which must terminate in a thorough and universal conviction, not only that the Constitution has provided the most effectual guards against danger from that quarter, but that nothing short of a Constitution fully adequate to the national defense and the preservation of the Union can save America from as many standing armies as it may be split into States or Confederacies, and from such a progressive augmentation of these establishments in each as will render them as burdensome to the properties and ominous to the liberties of the people as any establishment that can become necessary under a united and efficient government must be tolerable to the former and safe to the latter.

The palpable necessity of the power to provide and maintain a navy has protected that part of the Constitution against a spirit of censure which has spared few other parts. It must, indeed, be numbered among the greatest blessings of America that as her Union will be the only source of her maritime strength, so this will be a principal source of her security against danger from abroad. In this respect our situation bears another likeness to the insular advantage of Great Britain. The batteries most capable of repelling foreign enterprises on our safety are happily such as can never be turned by a perfidious government against our liberties.

The inhabitants of the Atlantic frontier are all of them deeply interested in this provision for naval protection, and if they have hitherto been suffered to sleep quietly in their beds; if their property has remained safe against the predatory spirit of licentious adventurers; if their maritime towns have not yet been compelled to ransom themselves from the terrors of a conflagration by yielding to the exactions of daring and sudden invaders, these instances of good fortune are not to be ascribed to the capacity of the existing government for the protection of those from whom it claims allegiance, but to causes that are fugitive and fallacious. If we except perhaps Virginia and Maryland, which are peculiarly vulnerable on their eastern frontiers, no part of the Union ought to feel more anxiety on this subject than New York. Her seacoast is extensive. A very important district of the State is an island. The State itself is penetrated by a large navigable river for more than fifty leagues. The great emporium of its commerce, the great reservoir of its wealth, lies every moment at the mercy of events, and may also be regarded as a hostage for ignominious compliances with the dictates of a foreign enemy, or even with the rapacious demands of pirates and barbarians. Should a war be the result of the precarious situation of European affairs, and all the unruly passions attending it be let loose on the ocean, our escape from insults and depredations, not only on that element, but every part of the other bordering on it, will be truly miraculous. In the present condition of America, the States more immediately exposed to these calamities have nothing to hope from the phantom of a general government which now exists; and if their single resources were equal to the task of fortifying themselves against the danger, the object to be protected would be almost consumed by the means of protecting them.

The power of regulating and calling forth the militia has been already sufficiently vindicated and explained.

The power of levying and borrowing money, being the sinew of that which is to be exerted in the national defense, is properly thrown into the same class with it. This power, also, has been examined already with such attention, and has, I trust, been clearly shown to be necessary, both in the extent and form given to it by the Constitution. I will address one additional reflection only to those who contend that the power ought to have been restrained to external taxation—by which they mean taxes on articles imported from other countries. It cannot be doubted that this will always be a valuable source of revenue; that for a considerable time it must be a principal source; that at this moment it is an essential one. But we may form very mistaken ideas on this subject, if we do not call to mind in our calculations that the extent of revenue drawn from foreign commerce must vary with the variations, both in the extent and the kind of imports; and that these variations do not correspond with the progress of population, which must be the general measure of the public wants. As long as agriculture continues the sole field of labor, the importation of manufactures must increase as the consumers multiply. As soon as domestic manufactures are begun by the hands not called for by agriculture, the imported manufactures will decrease as the numbers of people increase. In a more remote stage, the imports may consist in a considerable part of raw materials, which will be wrought into articles for exportation, and will, therefore, require rather the encouragement of bounties than to be loaded with discouraging duties. A system of government meant for duration ought to contemplate these revolutions and be able to accommodate itself to them.

Some who have not denied the necessity of the power of taxation have grounded a very fierce attack against the Constitution, on the language in which it is defined. It has been urged and echoed that the power "to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United

States," amounts to an unlimited commission to exercise every power which may be alleged to be necessary for the common defense or general welfare. No stronger proof could be given of the distress under which these writers labor for objections, than their stooping to such a misconstruction.

Had no other enumeration or definition of the powers of the Congress been found in the Constitution than the general expressions just cited, the authors of the objection might have had some color for it; though it would have been difficult to find a reason for so awkward a form of describing an authority to legislate in all possible cases. A power to destroy the freedom of the press, the trial by jury, or even to regulate the course of descents, or the forms of conveyances, must be very singularly expressed by the terms "to raise money for the general welfare."

But what color can the objection have, when a specification of the objects alluded to by these general terms immediately follows and is not even separated by a longer pause than a semicolon? If the different parts of the same instrument ought to be so expounded as to give meaning to every part which will bear it, shall one part of the same sentence be excluded altogether from a share in the meaning; and shall the more doubtful and indefinite terms be retained in their full extent, and the clear and precise expressions be denied any signification whatsoever? For what purpose could the enumeration of particular powers be inserted, if these and all others were meant to be included in the preceding general power? Nothing is more natural nor common than first to use a general phrase, and then to explain and qualify it by a recital of particulars. But the idea of an enumeration of particulars which neither explain nor qualify the general meaning, and can have no other effect than to confound and mislead, is an absurdity, which, as we are reduced to the dilemma of charging either on the authors of the objection or on the authors of the Constitution, we must take the liberty of supposing had not its origin with the latter.

The objection here is the more extraordinary, as it appears that the language used by the convention is a copy from the Articles of Confederation. The objects of the Union among the States, as described in article third, are "their common defense, security of their liberties, and mutual and general welfare." The terms of article eighth are still more identical: "All charges of war and all other expenses that shall be incurred for the common defense or general welfare and allowed by the United States in Congress shall be defrayed out of a common treasury," etc. A similar language again occurs in article ninth. Construe either of these articles by the rules which would justify the construction put on the new Constitution, and they vest in the existing Congress a power to legislate in all cases whatsoever. But what would have been thought of that assembly, if, attaching themselves to these general expressions and disregarding the specifications which ascertain and limit their import, they had exercised an unlimited power of providing for the common defense and general welfare? I appeal to the objectors themselves, whether they would in that case have employed the same reasoning in justification of Congress as they now make use of against the convention. How difficult it is for error to escape its own condemnation.

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To what expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments as laid down in the Constitution? The only answer that can be given is that as all these exterior provisions are found to be inadequate the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. Without presuming to undertake a full development of this important idea I will hazard a few general observations which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention.

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, and some additional expense would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; second, because the permanent tenure by which the appointments are held in that department must soon destroy all sense of dependence on the authority conferring them.

It is equally evident that the members of each department should be as little dependent as possible on those of the others for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal.

But the great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature that such devices should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other—that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State.

But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified. An absolute negative on the legislature appears, at first view, to be the natural defense with which the executive magistrate should be armed. But perhaps it would be neither altogether safe nor alone sufficient. On ordinary occasions it might not be exerted with the requisite firmness, and on extraordinary occasions it might be perfidiously abused. May not this defect of an absolute negative be supplied by some qualified connection between this weaker department and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department?

If the principles on which these observations are founded be just, as I persuade myself they are, and they be applied as a criterion to the several State constitutions, and to the federal Constitution, it will be found that if the latter does not perfectly correspond with them, the former are infinitely less able to bear such a test.

There are, moreover, two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view.

First. In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.

Second. It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority—that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority. In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government, since it shows that in exact proportion as the territory of the Union may be formed into more circumscribed Confederacies, or States, oppressive combinations of a majority will be facilitated; the best security, under the republican forms, for the rights of every class of citizen, will be diminished; and consequently the stability and independence of some member of the government, the only other security, must be proportionally increased. Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. It can be little doubted that if the State of Rhode Island was separated from the Confederacy and left to itself, the insecurity of rights under the popular form of government within such narrow limits would be displayed by such reiterated oppressions of factious majorities that some power altogether independent of the people would soon be called for by the voice of the very factions whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good; whilst there being thus less danger to a minor from the will of a major party, there must be less pretext, also, to provide for the security of the former, by introducing into the government a will not dependent on the latter, or, in other words, a will independent of the society itself. It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practicable sphere, the more duly capable it will be of self-government. And happily for the *republican cause*, the practicable sphere may be carried to a very great extent by a judicious modification and mixture of the *federal principle*. PUBLIUS

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I shall here, perhaps, be reminded of a current observation "that where annual elections end, tyranny begins." If it be true, as has often been remarked, that sayings which become proverbial are generally founded in reason, it is not less true that when once established they are often applied to cases to which the reason of them does not extend. I need not look for a proof beyond the case before us. What is the reason on which this proverbial observation is founded? No man will subject himself to the ridicule of pretending that any natural connection subsists between the sun or the seasons, and the period within which human virtue can bear the temptations of power. Happily for mankind, liberty is not, in this respect, confined to any single point of time, but lies within extremes, which afford sufficient latitude for all the variations which may be required by the various situations and circumstances of civil society. The election of magistrates might be, if it were found expedient, as in some instances it actually has been, daily, weekly, or monthly, as well as annual; and if circumstances may require a deviation from the rule on one side, why not so on the other side? Turning our attention to the periods established among ourselves, for the election of the most numerous branches of the State legislatures, we find them by no means coinciding any more in this instance than in the elections of other civil magistrates. In Connecticut and Rhode Island, the periods are half-yearly. In the other States, South Carolina excepted, they are annual. In South Carolina they are biennial—as is proposed in the federal government. Here is a difference, as four to one, between the longest and shortest periods; and yet it would be not easy to show, that Connecticut or Rhode Island is better governed, or enjoys a greater share of rational liberty, than South Carolina; or that either the one or the other of these States is distinguished in these respects, and by these causes, from the States whose elections are different from both.

In searching for the grounds of this doctrine, I can discover but one, and that is wholly inapplicable to our case. The important distinction so well understood in America between a Constitution established by the people and unalterable by the government, and a law established by the government and alterable by the government, seems to have been little understood and less observed in any other country. Wherever the supreme power of legislation has resided, has been supposed to reside also a full power to change the form of the government. Even in Great Britain, where the principles of political and civil liberty have been most discussed, and where we hear most of the rights of the Constitution, it is maintained that the authority of the Parliament is transcendent and uncontrollable as well with regard to the Constitution as the ordinary objects of legislative provision. They have accordingly, in several instances, actually changed, by legislative acts, some of the most fundamental articles of the government. They have in particular, on several occasions, changed the period of election; and, on the last occasion, not only introduced septennial in place of triennial elections, but by the same act, continued themselves in place four years beyond the term for which they were elected by the people. An attention to these dangerous practices has produced a very natural alarm in the votaries of free government, of which frequency of elections is the cornerstone; and has led them to seek for some security to liberty, against the danger to which it is exposed. Where no Constitution, paramount to the government, either existed or could be obtained, no constitutional security, similar to that established in the United States, was to be attempted. Some other security, therefore, was to be sought for; and what better security would the case admit than that of selecting and appealing to some simple and familiar portion of time as a standard for measuring the danger of innovations, for fixing the national sentiment, and for uniting the patriotic exertions? The most simple and familiar portion of time applicable to the subject was that of a year; and hence the doctrine has been inculcated by a laudable zeal to erect some barrier against the gradual innovations of an unlimited government, that the advance towards tyranny was to be calculated by the distance of departure from the fixed point of annual elections. But what necessity can there be of applying this expedient to a government limited, as the federal government will be, by the authority of a paramount Constitution? Or who will pretend that the liberties of the people of America will not be more secure under biennial elections, unalterably fixed by such a Constitution, than those of any other nation would be, where elections were annual, or even more frequent, but subject to alterations by the ordinary power of the government?

The second question stated is whether biennial elections be necessary or useful. The propriety of answering this question in the affirmative will appear from several very obvious considerations.

No man can be a competent legislator who does not add to an upright intention and a sound judgment a certain degree of knowledge of the subjects on which he is to legislate. A part of this knowledge may be acquired by means of information which lie within the compass of men in private as well as public stations. Another part can only be attained, or at least thoroughly attained, by actual experience in the station which requires the use of it. The period of service ought, therefore, in all such cases, to bear some proportion to the extent of practical knowledge requisite to the due performance of the service. The period of legislative service established in most of the States for the more numerous branch is, as we have seen, one year. The question then may be put into this simple form: does the period of two years bear no greater proportion to the knowledge requisite for federal legislation than one year does to the knowledge requisite for

State legislation? The very statement of the question, in this form, suggests the answer that ought to be given to it.

In a single State, the requisite knowledge relates to the existing laws which are uniform throughout the State and with which all the citizens are more or less conversant; and to the general affairs of the State, which lie within a small compass, are not very diversified, and occupy much of the attention and conversation of every class of people. The great theater of the United States presents a very different scene. The laws are so far from being uniform that they vary in every State; whilst the public affairs of the Union are spread throughout a very extensive region and are extremely diversified by the local affairs connected with them, and can with difficulty be correctly learned in any other place than in the central councils, to which a knowledge of them will be brought by the representatives of every part of the empire. Yet some knowledge of the affairs, and even of the laws, of all the States, ought to be possessed by the members from each of the States. How can foreign trade be properly regulated by uniform laws without some acquaintance with the commerce, the ports, the usages, and the regulations of the different States? How can the trade between the different States be duly regulated without some knowledge of their relative situations in these and other points? How can taxes be judiciously imposed and effectually collected if they be not accommodated to the different laws and local circumstances relating to these objects in the different States? How can uniform regulations for the militia be duly provided without a similar knowledge of some internal circumstances by which the States are distinguished from each other? These are the principal objects of federal legislation and suggest most forcibly the extensive information which the representatives ought to acquire. The other inferior objects will require a proportional degree of information with regard to them.

It is true that all these difficulties will, by degrees, be very much diminished. The most laborious task will be the proper inauguration of the government and the primeval formation of a federal code. Improvements on the first draught will every year become both easier and fewer. Past transactions of the government will be a ready and accurate source of information to new members. The affairs of the Union will become more and more objects of curiosity and conversation among the citizens at large. And the increased intercourse among those of different States will contribute not a little to diffuse a mutual knowledge of their affairs, as this again will contribute to a general assimilation of their manners and laws. But with all these abatements, the business of federal legislation must continue so far to exceed, both in novelty and difficulty, the legislative business of a single State, as to justify the longer period of service assigned to those who are to transact it.

A branch of knowledge which belongs to the acquirements of a federal representative and which has not been mentioned is that of foreign affairs. In regulating our own commerce, he ought to be not only acquainted with the treaties between the United States and other nations, but also with the commercial policy and laws of other nations. He ought not to be altogether ignorant of the law of nations; for that, as far as it is a proper object of municipal legislation, is submitted to the federal government. And although the House of Representatives is not immediately to participate in foreign negotiations and arrangements, yet from the necessary connection between the several branches of public affairs, those particular branches will frequently deserve attention in the ordinary course of legislation and will sometimes demand particular legislative sanction and co-operation. Some portion of this knowledge may, no doubt, be acquired in a man's closet; but some of it also can only be derived from the public sources of information; and all of it will be acquired to best effect by a practical attention to the subject during the period of actual service in the legislature.

There are other considerations, of less importance perhaps, but which are not unworthy of notice. The distance which many of the representatives will be obliged to travel and the arrangements rendered necessary by that circumstance might be much more serious objections with fit men to this service, if limited to a single year, than if extended to two years. No argument can be drawn on this subject from the case of the delegates to the existing Congress. They are elected annually, it is true; but their re-election is considered by the legislative assemblies almost as a matter of course. The election of the representatives by the people would not be governed by the same principle.

A few of the members, as happens in all such assemblies, will possess superior talents; will, by frequent re-elections, become members of long standing; will be thoroughly masters of the public business, and perhaps not unwilling to avail themselves of those advantages. The greater the proportion of new members and the less the information of the bulk of the members, the more apt will they be to fall into the snares that may be laid for them. This remark is no less applicable to the relation which will subsist between the House of Representatives and the Senate.

It is an inconvenience mingled with the advantages of our frequent elections, even in single States, where they are large, and hold but one legislative session in a year, that spurious elections cannot be investigated and annulled in time for the decision to have its due effect. If a return can be obtained, no matter by what unlawful means, the irregular member, who takes his seat of course, is sure of holding it a sufficient time to answer his purposes. Hence, a very pernicious encouragement is given to the use of unlawful means for obtaining irregular returns. Were elections for the federal legislature to be annual this practice might become a very serious abuse, particularly in the more distant States. Each house is, as it necessarily must be, the judge of the elections, qualifications, and returns of its members; and whatever improvements may be suggested by experience for simplifying and accelerating the process in disputed cases, so great a portion of a year would unavoidably elapse before an illegitimate member could be dispossessed of his seat that the prospect of such an event would be little check to unfair and illicit means of obtaining a seat.

All these considerations taken together warrant us in affirming that biennial elections will be as useful to the affairs of the public as we have seen that they will be safe to the liberties of the people.

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There is an idea, which is not without its advocates, that a vigorous executive is inconsistent with the genius of republican government. The enlightened well-wishers of this species of government must at least hope that the supposition is destitute of foundation; since they can never admit its truth, without at the same time admitting the condemnation of their own principles. Energy in the executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. Every man the least conversant in Roman history knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of dictator, as well against the intrigues of ambitious individuals who aspired to the tyranny, and the seditions of whole classes of the community whose conduct threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome.

There can be no need, however, to multiply arguments or examples on this head. A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government.

Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic executive, it will only remain to inquire, what are the ingredients which constitute this energy? How far can they be combined with those other ingredients which constitute safety in the republican sense? And how far does this combination characterize the plan which has been reported by the convention?

The ingredients which constitute energy in the executive are unity; duration; an adequate provision for its support; and competent powers.

The ingredients which constitute safety in the republican sense are a due dependence on the people, and a due responsibility.

Those politicians and statesmen who have been the most celebrated for the soundness of their principles and for the justness of their views have declared in favor of a single executive and a numerous legislature. They have, with great propriety, considered energy as the most necessary qualification of the former, and have regarded this as most applicable to power in a single hand; while they have, with equal propriety, considered the latter as best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people and to secure their privileges and interests.

That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished.

This unity may be destroyed in two ways: either by vesting the power in two or more magistrates of equal dignity and authority, or by vesting it ostensibly in one man, subject in whole or in part to the control and cooperation of others, in the capacity of counselors to him. Of the first, the two consuls of Rome may serve as an example; of the last, we shall find examples in the constitutions of several of the States. New York and New Jersey, if I recollect right, are the only States which have intrusted the executive authority wholly to single men.* Both these methods of destroying the unity of the executive have their partisans; but the votaries of an executive council are the most numerous. They are both liable, if not to equal, to similar objections, and may in most lights be examined in conjunction.

The experience of other nations will afford little instruction on this head. As far, however, as it teaches anything, it teaches us not to be enamored of plurality in the executive. We have seen that the Achaeans, on an experiment of two Praetors, were induced to abolish one. The Roman history records many instances of mischiefs to the republic from the dissensions between the consuls, and between the military tribunes, who were at times substituted for the consuls. But it gives us no specimens of any peculiar advantages derived to the state from the circumstance of the plurality of those magistrates. That the dissensions between them were not more frequent or more fatal is matter of astonishment, until we advert to the singular position in which the republic was almost continually placed, and to the prudent policy pointed out by the circumstances of the state, and pursued by the consuls, of making a division of the government between them. The patricians engaged in a perpetual struggle with the plebeians for the preservation of their ancient authorities and dignities; the consuls, who were generally chosen out of the former body, were commonly united by the personal interest they had in the defense of the privileges of their order. In addition to this motive of union, after the arms of the republic had considerably expanded the bounds of its empire, it became an established custom with the consuls to divide the administration between themselves by lot—one of them remaining at Rome to govern the city and its environs, the other taking command in the more distant provinces. This expedient must no doubt have had great influence in preventing those collisions and rivalships which might otherwise have embroiled the peace of the republic.

But quitting the dim light of historical research, and attaching ourselves purely to the dictates of reason and good sense, we shall discover much greater cause to reject than to approve the idea of plurality in the executive, under any modification whatever.

Whenever two or more persons are engaged in any common enterprise or pursuit, there is always danger of difference of opinion. If it be a public trust or office in which they are clothed with equal dignity and authority, there is peculiar danger of personal emulation and even animosity. From either, and especially from all these causes, the most bitter dissensions are apt to spring. Whenever these happen, they lessen the respectability, weaken the authority, and distract the plans and operations of those whom they divide. If they should unfortunately assail the supreme executive magistracy of a country, consisting of a plurality of persons, they might impede or frustrate the most important measures of the government in the most critical emergencies of the state. And what is still worse, they might split the community into the most violent and irreconcilable factions, adhering differently to the different individuals who composed the magistracy.

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* New York has no council except for the single purpose of appointing to offices; New Jersey has a council whom the governor may consult. But I think, from the terms of the Constitution, their resolutions do not bind him.

Men often oppose a thing merely because they have had no agency in planning it, or because it may have been planned by those whom they dislike. But if they have been consulted, and have happened to disapprove, opposition then becomes, in their estimation, an indispensable duty of self-love. They seem to think themselves bound in honor, and by all the motives of personal infallibility, to defeat the success of what has been resolved upon contrary to their sentiments. Men of upright, benevolent tempers have too many opportunities of remarking, with horror, to what desperate lengths this disposition is sometimes carried, and how often the great interests of society are sacrificed to the vanity, to the conceit, and to the obstinacy of individuals, who have credit enough to make their passions and their caprices interesting to mankind. Perhaps the question now before the public may, in its consequences, afford melancholy proofs of the effects of this despicable frailty, or rather detestable vice, in the human character.

Upon the principles of a free government, inconveniences from the source just mentioned must necessarily be submitted to in the formation of the legislature; but it is unnecessary, and therefore unwise, to introduce them into the constitution of the executive. It is here too that they may be most pernicious. In the legislature, promptitude of decision is oftener an evil than a benefit. The differences of opinion, and the jarring of parties in that department of the government, though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection, and serve to check excesses in the majority. When a resolution too is once taken, the opposition must be at an end. That resolution is a law, and resistance to it punishable. But no favorable circumstances palliate or atone for the disadvantages of dissension in the executive department. Here they are pure and unmixed. There is no point at which they cease to operate. They serve to embarrass and weaken the execution of the plan or measure to which they relate, from the first step to the final conclusion of it. They constantly counteract those qualities in the executive which are the most necessary ingredients in its composition—vigor and expedition, and this without any counter-balancing good. In the conduct of war, in which the energy of the executive is the bulwark of the national security, everything would be to be apprehended from its plurality.

It must be confessed that these observations apply with principal weight to the first case supposed—that is, to a plurality of magistrates of equal dignity and authority, a scheme, the advocates for which are not likely to form a numerous sect; but they apply, though not with equal yet with considerable weight to the project of a council, whose concurrence is made constitutionally necessary to the operations of the ostensible executive. An artful cabal in that council would be able to distract and to enervate the whole system of administration. If no such cabal should exist, the mere diversity of views and opinions would alone be sufficient to tincture the exercise of the executive authority with a spirit of habitual feebleness and dilatoriness.

But one of the weightiest objections to a plurality in the executive, and which lies as much against the last as the first plan is that it tends to conceal faults and destroy responsibility. Responsibility is of two kinds—to censure and to punishment. The first is the more important of the two, especially in an elective office. Men in public trust will much oftener act in such a manner as to render them unworthy of being any longer trusted, than in such a manner as to make them obnoxious to legal punishment. But the multiplication of the executive adds to the difficulty of detection in either case. It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author. The circumstances which may have led to any national miscarriage or misfortune are sometimes so complicated that where there are a number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pronounce to whose account the evil which may have been incurred is truly chargeable.

"I was overruled by my council. The council were so divided in their opinions that it was impossible to obtain any better resolution on the point." These and similar pretexts are constantly at hand, whether true or false. And who is there that will either take the trouble or incur the odium of a strict scrutiny into the secret springs of the transaction? Should there be found a citizen zealous enough to undertake the unpromising task, if there happened to be a collusion between the parties concerned, how easy it is to clothe the circumstances with so much ambiguity as to render it uncertain what was the precise conduct of any of those parties.

In the single instance in which the governor of this State is coupled with a council—that is, in the appointment to offices, we have seen the mischiefs of it in the view now under consideration. Scandalous appointments to important offices have been made. Some cases, indeed, have been so flagrant that ALL PARTIES have agreed in the impropriety of the thing. When inquiry has been made, the blame has been laid by the governor on the members of the council, who, on their part, have charged it upon his nomination; while the people remain altogether at a loss to determine by whose influence their interests have been committed to hands so unqualified and so manifestly improper. In tenderness to individuals, I forbear to descend to particulars.

It is evident from these considerations that the plurality of the executive tends to deprive the people of the two greatest securities they can have for the faithful exercise of any delegated power, *first*, the restraints of public opinion, which lose their efficacy, as well on account of the division of the censure attendant on bad measures among a number as on account of the uncertainty on whom it ought to fall; and *second*, the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office or to their actual punishment in cases which admit of it.

In England, the king is a perpetual magistrate; and it is a maxim which has obtained for the sake of the public peace that he is unaccountable for his administration, and his person sacred. Nothing, therefore, can be wiser in that kingdom than to annex to the king a constitutional council, who may be responsible to the nation for the advice they give. Without this, there would be no responsibility whatever in the executive department—an idea inadmissible in a free government. But even there the king is not bound by the resolutions of his council, though they are answerable for the advice they give. He is the absolute master of his own conduct in the exercise of his office and may observe or disregard the counsel given to him at his sole discretion.

But in a republic where every magistrate ought to be personally responsible for his behavior in office, the reason which in the British Constitution dictates the propriety of a council not only ceases to apply, but turns against the institution. In the monarchy of Great Britain, it furnishes a substitute for the prohibited responsibility of the Chief Magistrate, which serves in some degree as a hostage to the national justice for his good behavior. In the American republic, it would serve to destroy, or would greatly diminish, the intended and necessary responsibility of the Chief Magistrate himself.

The idea of a council to the executive, which has so generally obtained in the State institutions, has been derived from that maxim of republican jealousy which considers power as safer in the hands of a number of men than of a single man. If the maxim should be admitted to be applicable to the case, I should contend that the advantage on that side would not counterbalance the numerous disadvantages on the opposite side. But I do not think the rule at all applicable to the executive power. I clearly concur in opinion, in this particular, with a writer whom the celebrated Junius pronounces to be "deep, solid, and ingenious," that "the executive power is more easily confined when it is one";* that it is far more safe there should be a single object for the jealousy and watchfulness of the people; and, in a word, that all multiplication of the executive is rather dangerous than friendly to liberty.

A little consideration will satisfy us that the species of security sought for in the multiplication of the executive is unattainable. Numbers must be so great as to render combination difficult, or they are rather a source of danger than of security. The united credit and influence of several individuals must be more formidable to liberty than the credit and influence of either of them separately. When power, therefore, is placed in the hands of so small a number of men as to admit of their interests and views being easily combined in a common enterprise, by an artful leader, it becomes more liable to abuse, and more dangerous when abused, than if it be lodged in the hands of one man, who, from the very circumstance of his being alone, will be more narrowly watched and more readily suspected, and who cannot unite so great a mass of influence as when he is associated with others. The decemvirs of Rome, whose name denotes their number,** were more to be dreaded in their usurpation than any ONE of them would have been. No person would think of proposing an executive much more numerous than that body; from six to a dozen have been suggested for the number of the council. The extreme of these numbers is not too great for an easy combination; and from such a combination America would have more to fear than from the ambition of any single individual. A council to a magistrate, who is himself responsible for what he does, are generally nothing better than a clog upon his good intentions, are often the instruments and accomplices of his bad, and are almost always a cloak to his faults.

I forbear to dwell upon the subject of expense; though it be evident that if the council should be numerous enough to answer the principal end aimed at by the institution, the salaries of the members, who must be drawn from their homes to reside at the seat of government, would form an item in the catalogue of public expenditures too serious to be incurred for an object of equivocal utility.

I will only add that, prior to the appearance of the Constitution, I rarely met with an intelligent man from any of the States who did not admit, as the result of experience, that the UNITY of the executive of this State was one of the best of the distinguishing features of our Constitution. PUBLIUS

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We proceed now to an examination of the judiciary department of the proposed government.

In unfolding the defects of the existing Confederation, the utility and necessity of a federal judicature have been clearly pointed out. It is the less necessary to recapitulate the considerations there urged as the propriety of the institution in the abstract is not disputed; the only questions which have been raised being relative to the manner of constituting it, and to its extent. To these points, therefore, our observations shall be confined.

The manner of constituting it seems to embrace these several objects: 1st. The mode of appointing the judges. 2nd. The tenure by which they are to hold their places. 3rd. The partition of the judiciary authority between different courts and their relations to each other.

First. As to the mode of appointing the judges: this is the same with that of appointing the officers of the Union in general and has been so fully discussed in the two last numbers that nothing can be said here which would not be useless repetition.

Second. As to the tenure by which the judges are to hold their places: this chiefly concerns their duration in office, the provisions for their support, the precautions for their responsibility.

According to the plan of the convention, all judges who may be appointed by the United States are to hold their offices *during good behavior*; which is conformable to the most approved of the State constitutions, and among the rest, to that of this State. Its propriety having been drawn into question by the adversaries of that plan is no light symptom of the rage for objection which disorders their imaginations and judgments. The standard of good behavior for the continuance in office of the judicial magistracy is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government to secure a steady, upright, and impartial administration of the laws.

Whoever attentively considers the different departments of power must perceive that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political

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* De Lolme

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rights of the Constitution; because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honors but holds the sword of the community. The legislature not only commands the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

This simple view of the matter suggests several important consequences. It proves incontestably that the judiciary is beyond comparison the weakest of the three departments of power;* that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the executive. For I agree that "there is no liberty if the power of judging be not separated from the legislative and executive powers."** And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security.

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the grounds on which it rests cannot be unacceptable.

There is no position which depends on clearer principles than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid.

If it be said that the legislative body are themselves the constitutional judges of their own powers and that the construction they put upon them is conclusive upon the other departments it may be answered that this cannot be the natural presumption where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed that the Constitution could intend to enable the representatives of the people to substitute their *will* to that of their constituents. It is far more rational to suppose that the courts were designed to be an intermediate body between the people and the legislature in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both, and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws rather than by those which are not fundamental.

This exercise of judicial discretion in determining between two contradictory laws is exemplified in a familiar instance. It not uncommonly happens that there are two statutes existing at one time, clashing in whole or in part with each other and neither of them containing any repealing clause or expression. In such a case, it is the province of the courts to liquidate and fix their meaning and operation. So far as they can, by any fair construction, be reconciled to each other, reason and law conspire to dictate that this should be done; where this is impracticable, it becomes a matter of necessity to give effect to one in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is that the last in order of time shall be preferred to the first. But this is a mere rule of construction, not derived from any positive law but from the nature and reason of the thing. It is a rule not enjoined upon the courts by legislative provision but adopted by themselves, as consonant to truth and propriety, for the direction of their conduct as interpreters of the law. They thought it reasonable that between the interfering acts of an *equal* authority that which was the last indication of its will should have the preference.

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* The celebrated Montesquieu, speaking of them, says: "Of the three powers above mentioned, the JUDICIARY is next to nothing."—*Spirit of Laws*, Vol. I, page 186.

** Idem, page 181.

But in regard to the interfering acts of a superior and subordinate authority of an original and derivative power, the nature and reason of the thing indicate the converse of that rule as proper to be followed. They teach us that the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that accordingly, whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former.

It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it proved anything, would prove that there ought to be no judges distinct from that body.

If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.

This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community. Though I trust the friends of the proposed Constitution will never concur with its enemies*** in questioning that fundamental principle of republican government which admits the right of the people to alter or abolish the established Constitution whenever they find it inconsistent with their happiness; yet it is not to be inferred from this principle that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents incompatible with the provisions in the existing Constitution would, on that account, be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge of their sentiments, can warrant their representatives in a departure from it prior to such as act. But it is easy to see that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community.

But it is not with a view to infractions of the Constitution only that the independence of the judges may be an essential safeguard against the effects of occasional ill humors in the society. These sometimes extend no farther than to the injury of the private rights of particular classes of citizens, by unjust and partial laws. Here also the firmness of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws. It not only serves to moderate the immediate mischiefs of those which may have been passed but it operates as a check upon the legislative body in passing them; who, perceiving that obstacles to the success of an iniquitous intention are to be expected from the scruples of the courts, are in a manner compelled, by the very motives of the injustice they meditate, to qualify their attempts. This is a circumstance calculated to have more influence upon the character of our governments than but few may be aware of. The benefits of the integrity and moderation of the judiciary have already been felt in more States than one; and though they may have displeased those whose sinister expectations they may have disappointed, they must have commanded the esteem and applause of all the virtuous and dis-interested. Considerate men of every description ought to prize whatever will tend to beget or fortify that temper in the courts; as no man can be sure that he may not be tomorrow the victim of a spirit of injustice, by which he may be a gainer today. And every man must now feel that the inevitable tendency of such a spirit is to sap the foundations of public and private confidence and to introduce in its stead universal distrust and distress.

That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence. If the power of making them was committed either to the executive or legislature there would be danger of an improper complaisance to the branch which possessed it; if to both, there would be an unwillingness to hazard the displeasure of either; if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity to justify a reliance that nothing would be consulted but the Constitution and the laws.

There is yet a further and a weighty reason for the permanency of the judicial offices which is deducible from the nature of the qualifications they require. It has been frequently remarked with great propriety that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind that the records of those precedents must unavoidably swell to a very considerable bulk and must demand long and laborious study to acquire a competent

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*** *Vide Protest of the Minority of the Convention of Pennsylvania*, Martin's speech, etc.

knowledge of them. Hence it is that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge. These considerations apprise us that the government can have no great option between fit characters; and that a temporary duration in office which would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench would have a tendency to throw the administration of justice into hands less able and less well qualified to conduct it with utility and dignity. In the present circumstances of this country and in those in which it is likely to be for a long time to come, the disadvantages on this score would be greater than they may at first sight appear; but it must be confessed that they are far inferior to those which present themselves under the other aspects of the subject.

Upon the whole, there can be no room to doubt that the convention acted wisely in copying from the models of those constitutions which have established good behavior as the tenure of their judicial offices in point of duration; and that so far from being blamable on this account, their plan would have been inexcusably defective if it had wanted this important feature of good government. The experience of Great Britain affords an illustrious comment on the excellence of the institution. PUBLIUS

SELECT BIBLIOGRAPHY

Following is an annotated bibliography on *The Federalist*, which has been prepared especially for secondary school teachers of American history, government, and civics. Most of the annotations include suggestions about the relationship of a book or journal article to one or more of the ten lessons in this volume. These books or journal articles might be used by teachers as background reading in preparation for teaching a lesson or as an extra reading assignment for students interested in extending their knowledge of ideas treated in a lesson.

A few items in this bibliography include an ED number, which identifies them as resources in the ERIC (Educational Resources Information Center) system. These resources are available in microfiche and/or paper copy from the ERIC Document Reproduction Service (EDRS). For information on prices write to EDRS, 3900 Wheeler Avenue, Alexandria, Virginia 22304. Abstracts and descriptive information on these ERIC documents are published in *Resources in Education* (RIE). Most ERIC documents are available for viewing in microfiche at libraries that subscribe to the ERIC collection.

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Cooke, Jacob E., Editor. *The Federalist*. Middletown, CT: Wesleyan University Press, 1982. A scholarly and readable edition of the essays of Madison, Hamilton, and Jay in support of the Constitution; annotated and cross-referenced.

DePauw, Linda Grant. *The Eleventh Pillar: New York State and the Federal Convention*. Ithaca, New York: Cornell University Press, 1966. Study of the ratification debate in New York in 1787-1788. Origins and significance of *The Federalist* papers are examined. Related to Lessons 1, 2, and 9.

Dietze, Gottfried. *The Federalist: A Classic on Federalism and Free Goverment*. Baltimore: The Johns Hopkins Press, 1960. This book explores the political theory of *The Federalist* papers and argues that free government, peace, and security are the fundamental concepts of this theory. Related to Lessons 3-8.

Donovan, Frank. *Mr. Madison's Constitution: The Story Behind the Constitutional Convention*. New York: Dodd, Mead & Company, 1965. This brief, easy to read book describes the involvement of James Madison in major decisions that shaped the Constitution of 1787 and the Bill of Rights. Related to Lessons 2 and 9.

Epstein, David F. *The Political Theory of The Federalist*. Chicago: University of Chicago Press, 1984. Discusses core ideas of Hamilton, Madison, and Jay in their essays that constitute *The Federalist*. Related to Lessons 3-8.

Fairfield, Roy P., Editor. *The Federalist Papers: Selected and Edited*. Baltimore: Johns Hopkins University Press, 1981. One of the several readily available and inexpensive paperback editions of the classic work by Hamilton, Madison, and Jay.

Freyer, Tony. "Federal Authority and State Resistance: A Dilemma of American Federalism." *This Constitution* 11 (Summer 1986): 11-17. ED 243 761. Traces history of state resistance to federal power, beginning with the debate over ratification, the Virginia and Kentucky resolutions through the resistances to civil rights in the 1960s. Useful with Lesson 4.

Greene, Jack. "The Imperial Roots of American Federalism." *This Constitution* 6 (Spring 1985): 4-11. ED 243 761. A study of the experience by colonists in operating within the British Empire reveals an attempt to work out relations between Parliament and the Colonies that provides for sufficient central authority while maintaining colonial sovereignty. The search did not end with the Declaration of Independence but continued through the Federal Convention of 1787. Especially useful for Lesson 4.

Hall, Kermit L. "Why We Don't Elect Federal Judges." *This Constitution* 10 (Spring 1986): 20-26. ED 243 761. Discusses the conflict between those wanting appointed judges who serve for life versus those who wanted elected judges in order to provide for more accountability. The author traces the debate during the convention over judicial independence and accountability. The present system was a compromise between the extremes of these positions through present controversies. Especially applicable to Lesson 6.

Hall, Kermit L. *The Supreme Court and Judicial Review in History.* Washington, DC: American Historical Association, Bicentennial Essays on the Constitution, 1985. Examines the meaning of judicial review, its application by the Supreme Court, and its development through American history. Very useful in connection with Lesson 6.

Hauser, Rita. "The Constitution and National Security." *National Forum* LXIV (Fall 1984): 57-59, 64. Focuses on the powers of the President to involve the nation in war without a declaration of war by Congress. Argues that for the most part, the Constitution is silent on many issues involving national security and offers little guidance in the conduct of foreign affairs. Very valuable in connection with Lesson 7.

Kelly, Alfred H., Winfred A. Harbison, and Herman Belz. *The American Constitution: Its Origins and Development.* 6th Edition. New York: W.W. Norton & Company, 1983. This is a broad and detailed examination of constitutional development in America, from its English origins to the present.

Kinkaid, John. "Resources on Federalism for Curriculum Development." *This Constitution* 10 (Spring 1986): 35-40. ED 243 761. A summary of various sources available for teaching about federalism as a principle of the Constitution, and in American history and today. The article is aimed at secondary teachers. Especially useful with Lesson 4.

Kurland, Philip B. and Ralph Lerner, Editors. *The Founders' Constitution.* Five Volumes. Chicago: University of Chicago Press, 1987. This anthology treats the English and colonial origins of the American Constitution, the events and ideas leading to the Convention of 1787, the debates and achievements of the Constitutional Convention and the subsequent ratifying conventions, and the application of ideas on constitutional government to development of the American nation through 1835.

League of Women Voters. *The Federalist Papers Reexamined.* Washington, DC: League of Women Voters of the United States Publication, 1977. An excellent series of pamphlets for use with discussion groups. Titles include: Past as Prologue: Present Perspectives; The Bill of Rights Then and Now: Perspectives on Individual Liberty; Perspectives on Congress: Performances and Prospects; Achieving Due Responsibility: Perspectives on the American Presidency; The Growth of Judicial Power: Perspectives on "The Least Dangerous Branch"; Our "Compound Republic": Perspectives on American Federalism. Each pamphlet consists of an introduction followed by a dialogue among scholars and knowledgeable lay people. Written for average audiences.

Lint, Gregg and Richard Alan Ryerson. "The Separation of Powers: John Adams's Influence on the Constitution." *This Constitution* 11 (Summer 1986): 24-31. ED 243 761. Traces the ideology of John Adams concerning separation of powers. Although Adams had been writing on the topic for 20 years, he had no direct impact on the Constitutional Convention since he was serving as Ambassador to Great Britain at the time. The Massachusetts Constitution of 1780, the oldest continual constitution in the world (not the Constitution of 1787) must serve as a monument of his political thinking. Useful with Lesson 5.

Main, Jackson Turner. *The Antifederalists: Critics of the Constitution, 1781-1788.* Chapel Hill: University of North Carolina Press, 1961. This is a thorough study of the political thought of the Antifederalists. It is related to Lesson 1.

Morris, Richard B. *Witnesses at the Creation, Hamilton, Madison, Jay and the Constitution.* New York: Holt, Rinehart and Winston, 1985. This book recounts the story of Alexander Hamilton, James Madison, and John Jay and the parts they played in the creation and subsequent ratification of the Constitution. The focus is their reasoned defense of the principles embodied in the Constitution as reflected in the arguments presented in *The Federalist*. Related to Lessons 1 and 2.

Morris, Richard. "The Constitutional Thought of John Jay." *This Constitution* 9 (Winter 1985): 25-33. ED 243 761. Describes Jay's political theory as revealed in Jay's writing, especially through correspondence from Jay to leading Federalists. Also discusses Jay's role in writing *The Federalist* papers. Especially useful with Lesson 2.

Patrick, John J. and Richard C. Remy. *Lessons on the Constitution: Supplements to High School Courses in American History, Government and Civics.* Washington, DC: Project '87 of the American Historical Association and the American Political Science Association, 1985. ED 258 891. A set of 60 lessons for high school courses on various aspects of American constitutional government.

Rakove, Jack N. "James Madison and the Extended Republic: Theory and Practice in American Politics." *This Constitution* 3 (Summer 1984): 16-22. ED 243 761. Focuses on Madison's ideas about an "extended republic" which Madison believed could be governed better than a small republic. While a small republic relied upon the "virtue" of individual citizens, the extended republic balanced interests and ambition by providing a sufficiently large area where no single interest can dominate and by providing a sufficient pool of talented persons so only the best can obtain office. The essay analyzes Madison's theory in practice as unforseen developments, such as political parties, emerged as a part of the American political structure. Especially useful with Lesson 4.

Rossiter, Clinton. *The Grand Convention: 1787.* New York: The Macmillan Company, 1966. This is a very readable scholarly account of the Constitutional Convention and its aftermath. It includes a fine discussion of the issue about including a Bill of Rights in the Constitution. Related to Lessons 1 and 9.

Rossiter, Clinton, Editor. *The Federalist Papers: Alexander Hamilton, James Madison, John Jay.* New York: New American Library, 1961. Probably the least expensive collection of *The Federalist* papers. Contains an excellent introduction by Clinton Rossiter and a summary of the contents of each *Federalist* essay.

Rutland, Robert Allen. *The Ordeal of the Constitution: The Anti-Federalists and the Ratification Struggle of 1787-1788.* Boston: Northeastern Press, 1983. Describes and analyzes the struggle for ratification of the Constitution. Describes both the arguments and the political strategies used by Federalists to gain control of state ratification conventions. Especially useful with Lesson 1.

Rutland, Robert Allen. *The Birth of the Bill of Rights, 1776-1791.* Chapel Hill: The University of North Carolina Press, 1955. This is a detailed account of the origins of the Federal Bill of Rights. Issues and alternative views of the revolutionary era are highlighted. Pertains to Lesson 9.

Schechter, Stephen L., Editor. *The Reluctant Pillar: New York and the Adoption of the Federal Constitution.* Troy, New York: Russell Sage College, 1985. This is a series of essays on constitutional choice and the ratification convention of New York in 1788. Related to Lessons 1, 2, 3, and 9.

Schechter, Stephen L. *Teaching About American Federal Democracy.* Philadelphia: Center for the Study of Federalism at Temple University, 1985. ED 248 161. Ten essays discuss federal democracy, the form of government of the United States. The concluding essay describes resources on federalism that can be used in curriculum development at the secondary and college levels. Many of the essays are followed by topics for further study and suggested readings for teachers. This is expecially useful with Lesson 4.

Schrag, Peter. *The Ratification of the Constitution and the Bill of Rights,* (A Teaching Unit Developed by the Secondary School History Committee of Amherst College). Boston: D. C. Heath and Company, 1964. This set of secondary school lessons explores the debate between Federalists and Antifederalists in 1787-1788. Related to Lessons 1 and 9.

Stearns, Jean. *The Federalist Without Tears.* Washington, DC: University Press of America, 1977. A sampler of Federalist writings in present day English style, with selected examples of original texts for comparison.

Storing, Herbert J. *What the Anti-Federalists Were For.* Chicago: University of Chicago Press, 1984. This book presents an introduction to the political thought of the opponents of the Constitution based on the author's extensive study of the subject. It is most appropriate for upper level high school students. Related to Lesson 1.

Storing, Herbert J., Editor. *The Complete Anti-Federalist.* Seven Volumes. Chicago: University of Chicago Press, 1981. This is a comprehensive collection of essays by various Antifederalist authors during the debates over ratification of the Constitution in 1787-1788.

Stourzh, Gerald. *Alexander Hamilton and the Idea of Republican Government.* Stanford, California: Stanford University Press, 1970. A study of the political thought of one of the most important of the Founders. Related to Lesson 2.

Wills, Garry. *Explaining America: The Federalist.* Garden City, New York: Doubleday & Company, Inc., 1981. This is a stimulating examination of the origins and significance of core ideas of Madison and Hamilton in *The Federalist.* Especially useful with Lessons 3, 5, and 8.

Wood, Gordon S. *The Creation of the American Republic, 1776-1787.* New York: W.W. Norton, 1972. This is a brilliant treatment of the ideas of the Federalists about constitutional government. The author shows that the Federalists made a significant contribution to political thought in western civilization.